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A [File endorsement omitted]

In The United States District Court For The Northern
District Of California, Northern Division

Cr. No. 13655

Indictment filed April 1, 1963

18 USC 2113(a) and (d)—Bank Robbery

18 USC 2113(a) and (d)—Robbery of Federally Insured
Savings and Loan Association

UNITED STATES OF AMERICA, PLAINTIFF

v.

CARL CALVIN WESTOVER, DEFENDANT

The Grand Jury charges:

COUNT I

At all times herein mentioned, the Fort Sutter Savings and Loan Association, 2200 J Street, Sacramento, California, hereinafter referred to as "said savings and loan association," was a savings and loan association duly organized and existing under the laws of the State of California, and an insured savings and loan association as defined in subsection (b) of Section 1724 of Title 12, United States Code (Federal Savings and Loan Insurance Act), that is to say, the deposits of said savings and loan association were at all times herein mentioned insured by the Federal Savings and Loan Insurance Corporation in accordance with the provisions of the Federal

B Savings and Loan Insurance Act, as amended; that said savings and loan association was at all times herein mentioned doing a general savings and loan business at Sacramento, in the County of Sacramento, State of California. At all times herein mentioned, D. Allan Roth, was Assistant Controller of said savings and loan association, and acting as such.

On the 4th day of February, 1963, in the City of Sacramento, County of Sacramento, in the Northern Division of the Northern District of California, and within the jurisdiction of this Court, Carl Calvin Westover, the defendant herein, did then and there by force and violence, or by intimidation, unlawfully, wilfully and feloniously, take or aid or abet the taking from the presence of D. Allan Roth, certain money and property, to wit: approximately \$1,546.50 lawful money of the

United States, which said money and property then and there did belong to and was in the care, custody and control of said savings and loan association, and in so doing, put in jeopardy the life of D. Allan Roth by the use of a dangerous weapon, to wit: a gun.

The grand jury further charges:

COUNT II

At all times herein mentioned, the Bank of America, National Trust and Savings Association, 53rd and Folsom Boulevard Branch, Sacramento, California, hereinafter referred to as "said bank," was a bank duly organized and existing under the laws of the State of California and an insured bank as

C defined in subsection (h) of Section 1813 of Title 12, United States Code (Federal Deposits Insurance Act), that is to say—the deposits of said bank were at all times herein mentioned insured by the Federal Deposits Insurance Corporation in accordance with the provisions of the Federal Deposits Insurance Act, as amended; that said bank was a member of the Federal Reserve System; that said bank was at all times herein mentioned doing a general banking business at 53rd and Folsom Boulevard, City of Sacramento, County of Sacramento, State of California. At all times herein mentioned Peter Patella was an Assistant Cashier of said bank and acting as such.

On or about the 14th day of March, 1963, in the City of Sacramento, County of Sacramento, in the Northern Division of the Northern District of California, and within the jurisdiction of this Court, Carl Calvin Westover, the defendant herein, did then and there by force and violence, or by intimidation, unlawfully, wilfully and feloniously, take or aid or abet the taking from the presence of Peter Patella, certain money and property, to wit: approximately \$4,254.00, lawful money of the United States, which said money and property then and there did belong to and was in the care, custody and control of said bank, and in so doing, put in jeopardy the life of Peter Patella by the use of a dangerous weapon, to wit: a gun.

L. B. BATTELLE,

Foreman.

A true bill.

CECIL F. POOLE,

United States Attorney.

By Robert E. Woodward

Assistant U.S. Attorney.

D Carl Calvin Westover.

18 USC 2113(a) and (d)—Bank Robbery.

Penalty:

Not more than 25 years, or

Not more than \$10,000.00, or both.

18 USC 2113(a) and (d)—Robbery of Federally Insured Savings and Loan Association.

Penalty:

Not more than 25 years, or

Not more than \$10,000.00, or both.

A true bill.

L. B. BATTELLIE, *Foreman.*

Filed in open court this — day of —, A.D. 19—.

Clerk.

Bail, \$25,000.00.

[Signature]

1 In the United States District Court for the Northern District of California, Northern Division

No. 13655.

UNITED STATES OF AMERICA, PLAINTIFF

vs.

CARL CALVIN WESTOVER, DEFENDANT

Transcript of Proceedings of June 10, 11, 12, and July 1, 1963,

Before Hon. SHERRILL HALBERT, Judge.

Appearances:

For the Government: Alan R. Porterfield, Esq., and E. Richard Walker, Esq., Assistant U.S. Attorneys.

For the Defendant: James S. Eddy, Esq., Forum Bldg., Sacramento, California.

11 ALLAN ROTH, called as a witness on behalf of the Government—Sworn:

The CLERK. State your name for the record, please.

The WITNESS. Allan Roth.

Direct examination by Mr. PORTERFIELD:

Q. Mr. Roth, would you tell us your business or occupation, sir?

A. I am Assistant Controller at Ft. Sutter Savings & Loan Association.

Q. How long have you been employed at that institution?

A. A little over a year.

Q. Calling your attention to the 4th of February, 1963, were you employed at that institution on that day?

A. I was.

Q. Can you tell us whether or not that bank is insured through a Federal Agency which insures the deposits which are held by savings and loan societies?

A. It is insured.

Mr. PORTERFIELD. Your Honor, I have shown this to counsel. I will ask the Clerk to mark it for identification at this time.

The COURT. Well, I don't know there is any use getting that into the record. Is there, Mr. Eddy?

Mr. EDDY. No, your Honor, I wouldn't think that it would be necessary.

12 The COURT: In other words, it is the certificate of insurance.

Mr. PORTERFIELD: Yes, your Honor. I didn't want to ask counsel to stipulate.

The COURT: I am not asking him to stipulate. In other words I will let the witness testify and Mr. Eddy can examine him in connection with it; but if you get this in evidence, then the Clerk will have it and they won't have anything to show out there that they are a legal institution.

Mr. PORTERFIELD: I was going to have it withdrawn.

Q. Would you look at that certificate, Mr. Roth and tell us whether that is the certificate of insurance issued by the United States Government to the Ft. Sutter Savings & Loan?

A. It is our certificate of insurance.

Q. And that institution is located where, sir?

A. 2200 J Street.

Q. That is in what City and State?

A. Sacramento, California.

Mr. PORTERFIELD: And I would ask the Court to take judicial notice that that address is located within the Northern District of California and within the jurisdiction of this Court.

The COURT: That follows as a matter of law.

Mr. PORTERFIELD: Very well, your Honor.

13 Q. Calling your attention to the 4th of February, 1963, did you have occasion to see the Defendant, Mr. Westover, who is seated at the Counsel table here?

A. Yes, I did.

Q. Will you tell us, please, where you were when you first saw him and about what time it was?

A. About 12:30 one of the girls came over to my desk and said there was a man who had asked to see the manager. I got up and walked over to the counter and I asked him if I could help him. He said he wanted to see about a loan. At the time I was at one of the tellers' desks working at the calculator, and I asked him to have a seat at my desk across the room.

I walked around the corner and the defendant was standing in the middle of the lobby. I asked him if he would have a seat at my desk, and at that time he pulled open his coat and display a Luger type weapon and informed me that it was a hold-up.

Q. Now, at that time can you tell us whether the defendant was wearing anything in the nature of disguise? That is, did he have a mask or anything of that nature?

A. He had a large black hat, a black suit that was too large, he was wearing a—he had his moustache on.

Q. He didn't have any hood over his eyes or face?

A. No.

Q. You could see his features clearly, is that correct?

A. See his features clearly, yes.

14 Q. After he told you what his purpose was in being there what did you do then?

A. He handed me a paper bag and he said, "Don't give me any trouble or I will blow the place apart."

Q. And what did you do then?

A. I went back around the counter and emptied two of the tellers' tills into the paper bag, and he requested I omit the coins. I handed him the bag back, and he said, "No, clean out the vault."

I went back to the vault, came back and handed him the paper bag, he went out the front door, he was in my sight through the window, he turned a corner going down 22nd Street and I could see him running down the street through the Elliott & Huston office, which is associated with ours. I followed out the door and saw him turn the alley and run down.

I asked a gentleman to identify him, and while I was turning around looking at the gentleman he disappeared from sight.

Q. All right. Then this alleyway is located immediately to the rear of your institution, is that correct?

A. That is right.

Q. That then would be between J and K Streets, is that right?

A. That is true.

Q. Have you seen the Defendant since that date until the present time?

A. I have not. I have seen his picture.

15 Q. Now, can you tell us how much money was taken by the Defendant when he left the bank?

A. \$1546.50.

Q. All right. I will show you now—

Mr. PORTERFIELD. I will offer this for identification and ask the Clerk to mark it, your Honor, and I have shown this to Counsel also.

The COURT. Government's Exhibit 1 for identification.

(Document referred to marked Government's Exhibit No. 1 for identification.)

By Mr. PORTERFIELD:

Q. I will show you now this record and ask if you recognize that record and can tell us what it is?

A. That is our nightly recap for February 4, 1963, showing a cash shortage of \$1546.50.

Q. And does this coincide with your recollection of the physical count that was made after the robbery took place?

A. It is.

Q. And is this part of the records of the bank?

A. This is a part of our records.

Offer in evidence

Mr. PORTERFIELD. I would offer this in evidence then, your Honor, as Prosecution's Exhibit.

The COURT. Let it be received and marked Government's Exhibit 1 as heretofore marked for identification.

(Document referred to marked Government's Exhibit No. 1 and received in evidence.)

16 Mr. PORTERFIELD. May this be marked for identification?

The COURT. Government Exhibit 2 for identification, the gun.

(Gun referred to was marked Government's Exhibit No. 2 for identification.)

By Mr. PORTERFIELD:

Q. I am going to show you Exhibit 2 for identification and ask you if you recognize or have seen a weapon similar to that before?

A. It appears to be the gun the Defendant used.

Mr. PORTERFIELD. All right. I have no further questions, your Honor.

The COURT. Mr. Eddy?

Cross-examination by Mr. EDDY:

Q. You say you have not seen the Defendant between that day and today, is that right?

A. That is right.

Q. Where did you see his picture?

A. One of the gentlemen from the F.B.I. brought in a series of mug shots.

Q. How many?

A. I would say that there was at least ten.

Q. Did you look at these all at the same time?

A. Yes, I did.

Q. Was the Defendant's photograph among them?

17 A. It was.

Q. The other nine, were they all photographs of male individuals?

A. They were.

Q. Were they all mature individuals?

A. They were.

Q. Were they all of the white or caucasian race?

A. They were caucasian.

Q. Did any of them have moustaches?

A. Yes.

Q. Did the one of the Defendant have a moustache?

A. It did not.

Q. It did not. Did you have any doubt about that identification from the photograph?

A. No.

Q. Do you have any doubt about it today?

A. No.

Q. Pardon me if I am wrong, Mr. Roth, but didn't you tell me that the money was all currency?

A. There was currency and there was coins. When I went into the vault he asked me to get some money, I had a roll of silver dollars, I gave that to him, when I was emptying the first till he told me to clean it out, and I put in a roll of quarters, I think it was and a roll of pennies, and he told me he didn't want any more of that stuff, to just give him currency.

Q. These coins got into the bag before he directed
18 you not to put any more coins in?

A. That is true, except for the money that was in the vault.

Mr. EDDY. No further questions.

The COURT. Mr. Porterfield?

Mr. PORTERFIELD. Yes, just one question.

Redirect examination by Mr. PORTERFIELD:

Q. In identifying the pictures or looking at the pictures that someone showed you did anyone point out any particular picture to you before you identified it?

A. No, they were given to me as a group to thumb through.

Q. And from the group you then selected the defendant's picture, is that correct?

A. I did.

Mr. PORTERFIELD. Thank you. No further questions.

May this witness be excused?

Mr. EDDY. No further questions.

The COURT. Unless there is objection he may be excused.

Mr. PORTERFIELD. The Prosecution will now call Mrs. Carol Lyon.

CAROL LYON, called as a witness on behalf of the Government—Sworn:

The CLERK. You name?

The WITNESS. Carol Lyon.

19 Direct examination by Mr. PORTERFIELD:

Q. Can you tell us your business or occupation, please?

A. I am a teller at Fort Sutter Savings & Loan.

Q. And how long have you been so employed?

A. Four years.

Q. Calling your attention to the 4th of February, 1963 were you so employed at the Fort Sutter Savings & Loan on that day?

A. Yes.

Q. Now, did you have occasion on that day to see the Defendant, Mr. Westover, seated at the counsel table?

A. Yes, I did.

Q. Will you tell us, please, about what time it was you first saw him and what, if anything attracted your attention to him?

A. I first saw him about close to 12:30. He came in and it was rather quiet in the office and I was at my window working and he came over to the window close to mine, and Allan was sitting at the desk near that window.

Q. By "Allan" whom do you mean?

A. Allan Roth.

Q. That is the gentleman who just testified?

A. Yes. And he said he would like to see someone concerning a loan. So Allan got up and went around to the other side of the lobby, and neither one of them sat down at the desk, they both stood up, and then they came back to the center of the lobby, and I saw the Defendant hand Mr. Roth—it
20 looked like a wallet at first, and then I realized it was a paper bag which was folded up, and he took the bag and came around to the tellers' cages and emptied the first teller's drawer and then came down to mine and took the currency out of mine, and the Defendant came over to my window and stood across from me at my window while Allan got the rest of the money.

Q. All right. After he had taken the money from your window what happened then?

A. Well, he stood there and watched all of us while Allan went into the vault to get more money.

Q. Did you see the Defendant leave?

A. Yes.

Q. Do you have any recollection of what time it was when he left the premises?

A. Well, it was about, I think, twenty to one.

Q. All right. Would it be fair to state then that the whole operation didn't take more than ten minutes or something like that?

A. No longer than that.

Q. Now, Mrs. Lyon, were you present at the time the amount of the loss was added up and figured and computed?

A. Yes, I was.

Q. And does the amount of \$1,546.50 coincide with your recollection as to the actual physical count?

A. Yes.

21 Q. All right. Have you seen the Defendant since the 4th of February 1963?

A. Today, here.

Mr. PORTERFIELD. All right. Thank you. I have no further questions.

The COURT. Mr. Eddy?

Mr. EDDY. No questions.

The COURT. That is all, Mrs. Lyon.

Mr. PORTERFIELD. May this witness be excused, your Honor?

The COURT. Unless there is objection she may be.

Mr. PORTERFIELD. Call Mrs. Lysaght, please.

NANCY LYSAGHT, called as a witness on behalf of the Government—Sworn:

The CLERK. Your name

The WITNESS. Nancy Lysaght.

Direct examination by Mr. PORTERFIELD:

Q. Will you tell us your business or occupation, please, Mrs. Lysaght?

A. Yes; I am Insurance Secretary and Teller at Fort Sutter Savings & Loan Association.

Q. And how long have you been employed there?

A. Four and a half years.

Q. Calling your attention to the 4th of February, 1963, were you employed at that office as of that day?

22 A. Yes, I was.

Q. And did you have occasion to see the defendant, Mr. Westover, on that day?

A. Yes.

Q. Will you tell us please, about what time it was when you first saw him and where you were?

A. Well, the first time I saw him that day was shortly after ten o'clock in the morning, he walked by the office out front and I noticed him then. I was looking out the window. And then I saw him when he came back in just before 12:30.

Q. And can you tell us what, if anything, attracted your attention when he came in around 12:30?

A. Well, I knew it was the same man that had gone by earlier, I just remembered his appearance, his dress and everything, and I thought to myself at the time, "There he is again."

Then he went to the counter down at the end and approached Mr. Roth, and then Mr. Roth went around the counter, met the defendant in the lobby, and at that time I saw them talking then in the center of the lobby, and Mr. Roth came back around the counter and started taking money from the till and putting it in a paper sack.

Q. Now is your normal work station, we will call it, is that located on the counter teller side of the bank——

A. Yes.

23 Q. Or on the other side of the bank?

A. It is behind the counter.

Q. So it is behind the counter then, and from your position, I take it, you could observe Mr. Roth as he went from teller to teller, is that right?

A. Yes.

Q. After you saw Mr. Roth putting money into the bag what did you see next?

A. Well, the Defendant sort of followed along on the other side, on the outside of the counter, and Mr. Roth took the money from one till, and then from another, and it was just about this point I realized what was going on. And then he went back into the vault and he took some coins, rolled money, put it in the sack, came out and handed it to the man, the Defendant, who then turned around and went out the front door.

Q. While Mr. Roth was at the vault did you observe the Defendant, or could you tell us where he was?

A. Yes, he was standing just a few feet away from where I was sitting at my desk. He was on the other side of the Counter, and he was observing Mr. Roth.

Q. All right. And when Mr. Roth came out from the vault did he remain behind the counter or did he go into the lobby area?

A. Mr. Roth?

24 Q. Yes.

A. When he came out from the vault and gave the paper sack to the defendant, who then turned and went out the front door, Mr. Roth then ran to the back of the office—no, wait; I think he went—I saw him go out the front door,—as I recall, Mr. Roth went out the back door to follow the man and he called the police at that point. But he tried to follow him out the back door.

Q. I see. Did the Defendant leave as soon as Mr. Roth handed him the bag?

A. Yes.

Mr. PORTERFIELD. I have no further questions.

The COURT. Mr. Eddy?

27 REGINA WACULA, called as a witness on behalf of the Government—Sworn:

The CLERK. Your name?

The WITNESS. Regina Wacula.

Direct examination by Mr. PORTERFIELD:

Q. Mrs. Wacula, have you been employed by the Ft. Sutter Savings & Loan Association?

A. Yes, I have.

Q. And calling your attention to the 4th of February, 1963, on that date were you employed by the Ft. Sutter Savings & Loan Association?

28 A. Yes, I was.

The COURT. A little louder, please. That thing there is not working. You will just have to speak up.

By Mr. PORTERFIELD:

Q. And what was your particular job at the bank at that time?

A. Secretary.

Q. And how long had you been working there?

A. I was four and a half years.

Q. Now, keeping in mind that particular date, the 4th of February, 1963, did you have occasion to see the defendant, Mr. Westover, on that day?

A. Yes.

Q. Would you tell us, please, about what time it was, to your recollection?

A. Well, it was about 12:25, and he came in and talked to Mr. Roth, and apparently they went over to his desk and he came back with a paper bag and Mr. Roth walked around back of the counter and started taking money from the till, and I told him, "I guess we are being robbed."

Q. I see. Now is your desk where you were working on the side of the office where Mr. Roth's desk is, or is it on the Teller's side, or counter side?

A. No, it is on the counter side, the fourth desk.

Q. On the counter side?

A. Yes.

29 Q. You were behind the counter with the other tellers is that right?

A. Yes.

Q. All right. And after you saw him start put money from the teller's window into the paper bag, what happened next, if you recollect?

A. Well, he just sort of followed him, and he started at the first till and took the money out of that till and then he walked—this man was on the other side of the counter, and Mr. Roth went down to the third till and took the money out of there, and the man who was robbing us was standing there looking at us, and Mr. Roth went into the vault and took some money out of the vault, and then went over and handed him the paper bag.

Q. Did the defendant remain then in the public area of the office?

A. Yes.

Q. That is, always out in the lobby area?

A. Yes, he was standing there watching us.

Q. I see. And Mr. Roth had gone behind the counter at the teller's station, is that correct?

A. Yes.

Q. And Mr. Roth also went into the vault, is that correct?

A. Yes.

* * * * *

32 CLARENCE DALE HUTCHINSON, called as a witness on behalf of the Government—Sworn:

The CLERK. Your name.

The WITNESS. Clarence Dale Hutchinson.

Direct examination by Mr. PORTERFIELD:

Q. Will you tell us your business or occupation, please, Mr. Hutchinson?

A. I am a Special Agent for the Bank of America, Corporate Officer and Assistant Cashier.

Q. And how long have you been so employed?

A. I have been with the Bank of America approximately eight years.

Q. I am going to ask you, Mr. Hutchinson, if, to your knowl-

edge, the Bank of America is insured with the Federal Deposit Insurance Corporation?

A. Yes, sir, it is.

33 Q. And in particular do you know whether or not the branch of the Bank of America located at 53rd and Folsom is so insured?

A. Yes, sir.

Q. I will show you now what purports to be a Federal Deposit Insurance Corporation certificate and ask you if you recognize that as the certificate for the branch at 53rd and Folsom?

A. It is.

Q. Did you cause a photocopy to be made of the original certificate?

A. I did.

Offer in evidence

Mr. PORTERFIELD. If there is no objection I will offer the photocopy of this certificate in evidence.

Mr. EDDY. No objection.

The COURT. It will be received and marked Government's Exhibit 3.

(Certificate of insurance referred to was marked Government's Exhibit No. 3 and received in evidence.)

Mr. PORTERFIELD. Thank you. I have no further questions.

Mr. EDDY. No questions.

Mr. PORTERFIELD. May the witness be excused, your Honor?

The COURT. Unless there is objection he may be.

Mr. PORTERFIELD. The Prosecution will call Peter Patella.

PETER PATELLA, called as a witness on behalf of the Government—Sworn:

The CLERK. Your name?

The WITNESS. Peter Patella.

Direct Examination by Mr. PORTERFIELD:

34 Q. Can you tell us your business or occupation, please, sir?

A. I am Assistant Cashier of the Bank of America, 53rd and Folsom Branch.

Q. How long have you been employed by the Bank of America?

A. Approximately 12 years.

Q. How long have you been at the 53rd and Folsom Branch?

A. From the day we opened on February 27th of 1962.

Q. 1962. Calling your attention to the 14th of March, 1963, were you employed at the 53rd and Folsom office on that day?

A. I was.

Q. And that office is located at 53rd and Folsom Boulevard in the City of Sacramento?

A. Yes.

Q. All right.

Mr. PORTERFIELD. Again I would ask the Court to take judicial notice that that is within the northern district of California.

Q. And did you have occasion to see the Defendant, Mr. Westover, seated at the counsel table, on that day?

A. I did.

Q. Can you tell us, please, about what time it was when you first saw him?

A. It was between 12:30 and 1:00 o'clock, about 12:50, approximately.

Q. Will you tell us what, if anything, attracted your
35 attention to the Defendant?

A. I was in the lobby speaking to one of the customers, and he called me down to the lower end of the counter.

Q. By "counter" you mean the counter where the bank officers are located, or the counter where the tellers are located?

A. Where the tellers are working.

Q. All right. And what happened then?

A. He held a note up for me to read.

Q. Can you tell us, please, what you saw on this note?

A. To the best of my knowledge it says, "This is a hold-up. Give me all your money, don't make any noise and nobody will get hurt."

Q. All right. And what happened then?

A. I reached for the note and the note was pulled back, and I asked him, "What do you want?"

Q. And what did he say?

A. He said, "This is a hold-up."

Q. All right. And at that time other than the note did you see anything that would indicate to you that he was serious about this?

A. Yes, sir; he pulled back his coat and started drawing out a gun.

Q. After this occurred, what did you do then?

A. I said, "How much do you want?" He says, "All of it."

36 Q. All right. After he told you he wanted all of it what did you do?

A. He gave me a paper sack and I started getting money from the first teller, which was Betty Stokes.

Q. All right. And that was on which end of the bank, would you say?

A. That would be on the south end, towards Folsom Boulevard, towards the officers' platform.

Q. Towards the officers' area. Was this the first teller's window that was open at that end of the bank?

A. Yes, it was.

Q. All right. Now, after you got the bag and went to that window, what did you do then?

A. I started to hand the bag to him and he motioned to the second teller.

Q. Who was that teller?

A. That was Mrs. Hansen.

Q. When he motioned that way what was your reaction?

A. I went along with him because he was following me down on the other side with his hand under his coat, so I got the money from the second—Mrs. Hansen,—and started to hand the bag to him.

Q. I see. And all during this time was the defendant,—did he remain on the outside, that is, the customer's side of the counter?

A. Yes.

37 Q. After you got through at Mrs. Hansen's station what happened?

A. He motioned me to go down to Mrs. Derbeque, the third teller.

Q. And this is the third teller station that was open at that particular time?

A. Yes.

Q. And what did you do then?

A. I put her money in the sack and handed the sack to him.

Q. I see. Can you tell us or do you have any recollection as to what sort of clothing the Defendant had on?

A. Well, as I can recall, it was sort of a gray top coat.

Q. All right. Now, I want to show you—

May this be marked for identification?

The Court. Government's Exhibit 4 for identification.

(A top coat was marked Government's Exhibit No. 4 for identification.)

By Mr. PORTERFIELD:

Q. I will show you Exhibit 4 for identification, which is a top coat, and ask you if you recognize having seen a top coat of this nature?

A. It was similar to that coat.

Q. By "similar to that coat" does your answer mean this coat appears to be similar to the coat you saw on the Defendant that day?

A. It does.

38 Q. I will show you Exhibit 2 for identification, which is a weapon, and ask if you recognize or have seen a gun resembling that before?

A. I have not seen the full gun. The butt portion does resemble it.

Q. Does resemble what, sir?

A. The gun that he displayed to me.

Q. Now, do you know or have any idea how much money you gave to the Defendant?

A. Approximately \$4240.00.

Q. In excess of four thousand dollars at any rate, is that correct?

A. Yes.

Mr. PORTERFIELD. I have no further questions.

40 Redirect examination by Mr. PORTERFIELD:

Q. Mr. Patella—

41 A. Yes.

Q. Did you, at the time the robbery took place, at the time you first saw the note that the Defendant had, notice anything as far as any physical characteristics were concerned?

A. Yes, I did. When he held the note for me to read, on his left hand right between the thumb and the third finger here was a portion of a tattoo.

Q. I see. You don't recall when it was that this photograph was shown to you, is that correct?

A. Not the exact time. It was considerable time, possibly two weeks after the robbery.

Q. I see. And it could have been—it was someone who identified himself to you as a police officer—

A. Yes.

Q. But it could have been the F.B.I. or local police, is that right?

A. Yes.

Mr. PORTERFIELD. All right.

The COURT. Mr. Eddy?

Mr. PORTERFIELD. I have no further questions, your Honor.

Recross examination by Mr. EDDY:

Q. About this tattoo now, sir, which hand did you say it was that had the tattoo on?

A. On the left side.

42 Q. Do you know what kind of design it was?

A. I do not.

Q. Did it say "Mother" or anything like that?

A. I didn't read it.

Q. Do you remember what color it was?

A. The best I can remember it was the normal bluish purple.

Mr. EDDY. I have no further questions.

Mr. PORTERFIELD. No further questions, your Honor. May the witness be excused?

The COURT. Unless there is objection he may be.

Mr. PORTERFIELD. Thank you, Mr. Patella.

The Prosecution will call Betty Stokes, at this time.

BETTY STOKES, called as a witness on behalf of the Government—Sworn:

The CLERK. Your name?

The WITNESS. Betty Stokes.

Direct examination by Mr. PORTERFIELD:

Q. Mrs. Stokes, will you tell us your business or occupation, please?

A. Yes; I am a teller at the Bank of America, 53rd and Folsom.

Q. How long have you been so employed?

A. Four months.

Q. Calling your attention to the 14th of March, 1963, were you employed as a teller at the 53rd and Folsom branch on that day?

43 A. Yes, I was.

Q. Did you have occasion to see the Defendant, Mr. Westover, who is seated at the Counsel table, on that day?

A. Yes, I did.

Q. Do you recollect or can you tell us about what time it was?

A. Between 12:30 and 1:00.

The COURT. A little louder, please.

A. Between 12:30 and 1:00.

Mr. PORTERFIELD. You will have to speak up, because Counsel and the jury have to hear you.

A. All right.

Q. Can you tell us what, if anything, attracted your attention to the Defendant?

A. Well, he resembled one of our customers, and I glanced up—I had only been working there a month, and I glanced up and he resembled one of my customers, and I went back to my work and didn't pay any more attention to him.

Q. What was the next thing that happened, as far as the Defendant was concerned, that you recollect?

A. As far as I was concerned, you mean?

Q. As far as anything that happened in the bank.

A. Well, that is when Mr. Patella came up to my cash and started putting my money in a bag. Like I say, I was new and I didn't know the bank procedure, so I just went on with my discussion with my customer, and I noticed he went on
44 down to the next teller and put her money in. Still it didn't dawn on me that this was happening, that it was a robbery, and then when he finally got down to Jewell's desk, the customer said, "You are being robbed," and then I was shocked, but I still didn't believe it.

Q. After you first saw him and noticed the resemblance with a customer, did you see the Defendant again in the bank within the same time period?

A. No.

Q. Did you notice where he was after Mr. Patella left your window?

A. He was on the outside of our cages.

Q. On the outside of the counter?

A. The counter, yes.

Q. Now, in connection with the money that you kept on your teller's station did you make any differentiation in the money that you kept there?

A. Yes, there was one stack we kept which was marked money.

Q. I see. And was this money at your station on that day?

A. Yes, it was.

Q. And did you keep that separate from the rest of your bills?

A. Yes.

Q. I say "bills". Was it currency?

A. Yes.

45 Q. Do you know whether that money was taken and put in the bag?

A. Yes, it was.

Q. So it was missing then after checking your cash drawer when Mr. Patella left?

A. Yes.

Mr. PORTERFIELD. Thank you. I have no further questions.
The COURT. Mr. Eddy?

* * * * *

49 Redirect examination by Mr. PORTERFIELD:

Q. Mrs. Stokes, when you saw the defendant in the bank on that day do you have any recollection about his attire, his clothing, as to what type of clothing he was wearing?

50 A. He had a top coat on.

Q. I want to show you Exhibit 4 for identification, which is a top coat, and ask you if you recognize or have seen a top coat like this before?

A. That resembles the one he had on.

Q. This one looks like the one he had on, on the Defendant, that you saw at the bank. Did he have a moustache such as he has now?

A. No, he didn't.

Q. And when you saw that you thought that he was someone else at first. Was this a real close resemblance or just one of those general resemblances that at first impression you might say he looks like someone?

A. Just a glance.

Q. Just a glancing impression?

A. Yes.

* * * * *

53 HELEN HANSEN, called as a witness on behalf of the Government—Sworn:

The CLERK. Your name?

The WITNESS. Helen Hansen.

Direct examination by Mr. PORTERFIELD:

54 Q. Will you tell us your business or occupation, please?

A. Since June the 1st, housewife.

Q. And before that were you employed?

A. I was employed as a teller at the Bank of America, 53rd and Folsom.

Q. How long had you been employed there?

A. Since about the 17th of December.

Q. And calling your attention to the 14th of March, 1963, were you working at the Bank of America, 53rd and Folsom branch, on that day?

A. Yes, I was.

Q. Mrs. Hansen, did you have occasion to see the Defendant, Mr. Westover, on that day?

A. Yes, I did.

Q. Will you tell us, please, what, if anything, attracted your attention to the Defendant?

A. Well, I noticed him come into the bank. I just happened to glance up as he walked in the door on the Folsom Street entrance, and I think the thing that attracted him to my attention was the fact that he walked in and looked around and looked a little hesitant, as though he didn't know what he wanted to do—most of our customers walk in and either go directly to the counter or to a teller's window, but he seemed hesitant, and then he turned and walked over to one of the customers' counters and started writing, and then I
55 didn't pay any more attention to him at that time.

Q. All right. Are these customers' counters located across the lobby from where the tellers' windows are?

A. Yes, they are.

Q. Now, did you see the Defendant or have occasion to notice him again after this first time when you noticed him?

A. No, I didn't pay much attention to him after that, because we were quite busy.

Q. I see. And did Mr. Patella come to your window about this time?

A. Yes. I know I noticed—I was waiting on a customer, and Mr. Patella was standing directly behind me, and that is one thing we don't do in the bank, we don't get that close to each other, we are responsible for our cash, and I turned around to see what he was doing, and he had this paper sack and he started putting the money into it, and then I realized what was going on, so I turned around and faced the front, and the Defendant was standing right there at the window. So all the time my money was being taken I looked directly at him and he was looking directly at me.

Q. I see. And the money then from your teller's window was taken by Mr. Patella and put in the bag?

A. Yes, sir.

Q. And after he finished taking your money, what happened next, if you recall?

56 A. Well then Mr. Patella moved down to Julie Derbeque's window and followed the same procedure, and as Mr. Patella moved away from my window Mr. Westover moved right down on the customers' side of the lobby and he stood almost in an identical position at Julie's window.

Q. I see. Now, could you describe a little bit the bank counter or teller's window out there at 53rd and Folsom. Is it a situation where each teller has a separate cage with high walls around it, or is it a different type of—

A. No, it is a long continuous counter, so we have complete visible access, you might say, to the entire lobby. The only thing that separates the individual counter—that indicates the individual counter and teller stations would be the plastic trays, which are movable. When we are on duty we set the trays up, but they are no more than about eight inches high, so it doesn't obstruct any view at all.

Q. I see. Would you describe this teller counter, then, as a low counter, or waist-high counter, running the length of the bank with the tellers' stations along it?

A. Yes. It would be higher than that.

Q. Higher than that, but still below your eye level, nothing to obstruct your vision?

A. Yes, that is right.

Q. Now, do you have any recollection as to how the Defendant was dressed on that particular day?

57 A. Yes. He was wearing a top coat—it was raining quite hard that day and he was wearing a top coat, which wasn't too unusual, except it was a style which you don't see too often.

Q. All right. I will show you Government's Exhibit 4 for identification and ask you if you have seen this coat before.

A. It was very similar to that, yes, sir.

Q. Now, Mrs. Hansen, at your station did you have any money which you kept separate from the money that you used in transacting your business?

A. Yes, we did.

Q. Can you tell us please, or explain that to us; what that was?

A. Well, it was what we call our "marked money" that we each had in the same amount, groups of—it was hundred dollar denominations, mixed bills, and that was banded and kept in plain access at all times.

Q. Did you have any packet like that at your station on the 14th of March?

A. Yes.

Q. And was that money taken and put in the bag by Mr. Patella?

A. Yes, it was.

Q. And did you keep that money separate from the rest of your cash?

A. Well, it was banded, but it was within easy access.

Q. It was in the same drawer—I will reframe my question and ask you this: Did you commingle this money with the other twenties and other fives and other tens?

A. No, no.

Mr. PORTERFIELD. Thank you. I have no further questions.
JEWELL DERBEQUE, called as a witness on behalf of the Government—Sworn:

The CLERK. Your name?

The WITNESS. Jewell Derbeque.

Direct examination by Mr. PORTERFIELD:

Q. Will you tell us your business or occupation, please?

A. I am vault teller at the Bank of America, 53rd and Folsom.

Q. How long have you been employed at the 53rd and Folsom branch of the Bank of America?

A. Since the bank opened there in 1962, February 22.

Q. Now, calling your attention to the 14th of March 1963, were you working at the 53rd and Folsom branch on that day?

A. Yes.

Q. And did you have occasion to see the Defendant, Mr. Westover on that day?

A. Yes, I did.

Q. Can you tell us, please, to your best recollection about what time it was that you saw him?

A. Well, it was shortly before one.

Q. And what, if anything, attracted your attention to the Defendant?

A. Well, I was very busy waiting on a customer that had a large deposit, and Mr. Patella came up to the back of me, to the vault—it is a portable vault—and he pulled the drawer open, my cash drawer, which was unusual, and I turned around and he was taking the money out and putting it in a bag, and I got rather excited, and I said, "What is going on?" And as I turned—when Mr. Patella, he turned and went toward the front of the bank, and I turned and saw this man standing to the left of the line of customers, and he was looking directly at me, and he was only a few feet away.

Q. Can you tell us, please, if you have any recollection of what the man's clothing was at the time you saw him?

A. He had on a gray checkered coat and it was a top coat with the collar turned up.

Q. I see. Was there anything that particularly attracted your attention about the pattern or the style of the coat?

A. Well, I heard them trying to describe his coat, and everyone kept comparing it with my suit that day.

Mr. EDDY. I am going to object to what was said.

62 The COURT. Well, nothing was said. She said she heard them talking about it, and they tried to compare it with her suit. Normally your objection would be well taken, but she didn't violate any rule, I don't think.

By Mr. PORTERFIELD:

Q. I will show you now Exhibit 4 for identification and ask you if you recognize that coat or have seen a coat that looks like this one.

A. It looks like the same coat he was wearing that day.

Q. Mrs. Derbeque, had you seen the defendant before you noticed him in front of your teller's window?

A. No, I hadn't.

Q. Did you have any money at your station which you kept separate or differentiated from the funds which you used in transacting your business?

A. Yes, sir.

Q. Can you explain that, please?

A. Well, it is marked, or "bait" money, they call it.

Q. And did you keep this in a separate distinct place from the rest of your money?

A. Yes, we did. The serial numbers had been taken and kept in double custody.

Q. Was this money bound together or held together in some way?

A. Yes, it was.

Q. All right. And to your knowledge was that money
63 taken on this particular day?

A. Yes, it was.

Q. Now, in looking at the defendant here in the court room, did you notice anything in his appearance that is different from his appearance on the 14th of March, 1963?

A. Yes; on that day he didn't have a moustache.

Mr. PORTERFIELD. I have no further questions.

65 ANNE OUSLEY, called as a witness on behalf of the
Government—Sworn:

The CLERK. Your name?

The WITNESS. Anne Ousley.

66 Direct examination by Mr. PORTERFIELD:

67 Q. Can you tell us, please, about what time it was that
you went to the bank, if you recall?

A. Well, I think it must have been about a quarter to one, because I left our drug store at 20 minutes to one, and it takes me about five minutes to drive to the bank.

Q. I see. Now, did you have occasion on that day, Mrs. Ousley, to see the Defendant, Mr. Westover, who is seated at the table here?

A. Yes, sir, I did.

Q. Can you tell us, please, what, if anything, attracted your attention to the Defendant when you first saw him?

A. Well, yes, I can. When I entered the bank Mr. Westover was at one of the service desks with a piece of yellow paper in his hand, and the bank didn't have too many tellers out because it was lunch hour, and the lines nearby were all crowded, and actually he was ahead of me, and I waited for him to step in the line, which he didn't do. He stood between two lines and didn't line up, and I thought that was rather peculiar.

Q. I see. What did you do then after he moved in between the lines?

A. Well, after he moved in between the lines I picked the line I thought would be the shorter of the two, which
68 happened to be Julie's line, and started waiting in line
for service.

Q. By "Julie" are you referring to Mrs. Derbeque, the witness who just testified?

A. Yes.

Q. And did you have occasion after you got in line to observe or see the Defendant again?

A. Yes, I observed him, because I thought his actions were suspicious. I said that originally—I thought that originally, because he failed to get in line, and then as each person entered the bank to line up for service he let them in ahead of him, and this isn't generally what people do when they are waiting for service in a bank, you take your turn, you don't let people in ahead of you in line.

Q. I see. Did you ever see or have occasion to notice whether the defendant was talking to or appeared to be talking to the witness, Mr. Peter Patella, who testified here in court?

A. Counsel, may I tell this in my own way?

Q. Certainly, I wish you would.

Mr. EDDY. I object, your Honor. I believe he should ask questions. Objections are to be made during the course of this testimony, and if it is in narrative form—

The COURT. Under the circumstances you will have to let the attorney ask the questions, Mrs. Ousley.

A. All right.

69

By Mr. PORTERFIELD:

Q. Then in order—as Counsel said, he may want to interpose an objection to something you might want to say, so keeping in mind that I am asking you now to relate what, if anything, you noticed or observed taking place in the bank after you had gotten in line, specifically I want to know if you observed or had occasion to see the Defendant and Mr. Patella talking or appearing to be talking at all?

A. Yes, I did.

Q. Can you tell us, please, about that, what you saw and what happened?

A. Well, I was watching—Mr. Westover, I am referring to—and as I stated, I was suspicious of his actions. I tried to tell Julie, the teller, that I thought something was wrong. I couldn't say that too loud, because the line that he was close to, where he was standing at that time, was close to me, so naturally I was a little bit afraid. When I started trying to talk to Julie and looked back he was at that point handing Mr. Patella a paper bag.

Q. I see. And what happened then that you observed?

A. Well, what happened is, he had his hand under his coat like this (demonstrating), and Mr. Patella was taking the money from the first cashier's window which happened to be open, the window where there was a girl servicing it, and took the money and put it in the paper bag.

70 Q. From your side of the counter you could see this taking place, is that correct?

A. Yes, I certainly could.

Q. And after he stopped at that first teller's window what happened then?

A. Well, Mr. Westover motioned him up to the next teller's desk and the same thing took place.

Q. Now, where were you during this period while he was going—

A. Still waiting in line for service.

Q. I see. To your recollection were you at that time engaged in your transaction with the teller?

A. No, I wasn't engaged in my transaction, I had not reached Julie, the teller, yet.

Q. There was still someone ahead of you?

A. There was still someone ahead of me, yes.

Q. All right. And after Mr. Patella and the Defendant moved up to the second teller's station what happened next?

A. Well, they moved up to the third station, which was the station at which I was standing, and Mr. Westover went right between me and the person that was ahead of me.

Q. About how far was he from you at the time he did that, Mrs. Ousley?

A. Well, actually he brushed me, he was that close to me.

Q. I see. Were you able to observe him closely at that time?

A. Very closely.

71 Q. Do you notice any difference in his appearance here in the court room today and his appearance on the 14th of March?

A. Yes, sir. He was clean shaven on the 14th of March. Today he is wearing a moustache.

Q. I see. Was there anything in particular that you noticed about his appearance on that day that you notice today is still present?

A. Yes; I think he has an unusual eye formation, the bones above his eyes are very prominent, which is a little unusual.

I made particular note of that the day I looked at him thoroughly.

Q. I see. Now, did you notice anything about his attire on the 14th of March when you saw him in the bank?

A. Yes; he was wearing what I would describe as a hound's tooth overcoat, hound's tooth checked overcoat.

Q. I will show you Prosecution's Exhibit 4 for identification and ask you if you have seen this top coat or one resembling it before?

A. Yes, it looks like the same coat, sir.

Q. By the same coat you mean it looks like the same coat the Defendant was wearing that day?

A. Yes, that is what I mean.

Q. All right. Now, at the time he came to the teller's window where you were standing what did he do there that you observed?

72 A. Well, Mr. Patella didn't say anything, he started putting Julie's money into the paper bag, and Julie looked around and observed what was happening, and I suppose this was a little unusual, so she asked him why he was taking her money, and he didn't answer her, but I did. I said, "He is taking the money because he is being robbed."

Q. All right. Did the Defendant say or do anything at that point?

A. He was practically shoulder to shoulder with me and he turned to me and told me to shut up.

Q. I see. All right. After the money was put in the bag at the window you were standing at what happened next?

A. Well, he started backing out of the bank; he still had his hand under his coat, and facing the end of the bank, he backed through the first two doors, which were swinging glass doors, and continued to leave the bank backwards by backing out finally outside the other—the outside doors.

Q. Was that out on to Folsom Boulevard?

A. Out on to Folsom Boulevard.

Q. I see.

Mr. PORTERFIELD. All right, thank you very much. I have no further questions.

78 IRMA HOLMES, called as a witness on behalf of the Government—sworn:

The CLERK. Your name?

The WITNESS. Irma Holmes.

79

Direct examination by Mr. PORTERFIELD:

Q. Mrs. Holmes, will you tell us your business or occupation?

A. I am Operations Officer for the Bank of America at the 53rd and Folsom Branch.

Q. How long have you been employed by the Bank of America?

A. Approximately eight years.

Q. How long have you been at the 53rd and Folsom Branch?

A. Since we opened, in February of 1962.

Q. In the course of your assignment at that branch as Operations Officer did you assist in the maintenance of the record with regard to the money that is kept in the tellers' cages?

A. Yes, sir.

Q. In particular, do you know that any records are kept regarding the particular money which is marked in each teller's station?

A. Yes.

Q. Who maintains that record?

A. They are kept in double custody.

Mr. EDDY. I didn't hear that, your Honor.

The COURT. "They are kept in double custody".

By Mr. PORTERFIELD:

Q. Are you one of the persons responsible for that custody?

A. Yes, sir, I am.

Q. Do you have those records with you here today?

A. Yes, sir.

80 Q. May I see them, please?

(Witness produces documents.)

Mr. PORTERFIELD. May I offer these cards as Prosecution's next in order, your Honor. May they be marked A, B and C, perhaps?

The COURT. Yes, 5-A, 5-B and 5-C for identification.

(Documents referred to were marked Government's Exhibits 5-A, 5-B, 5-C for identification.)

By Mr. PORTERFIELD:

Q. I am going to show you Prosecution's Exhibits 5-A, B and C, which are the three file cards, actually they are apparently written on the back, blank back of a regular bank deposit card, or something of that sort, and I will ask you if you recognize these cards and can tell us what they are?

A. These are the three cards with lists of the money taken from the three tellers during the hold-up.

Q. All right. Now, you say the lists of the money. How was the money identified on those cards, Mrs. Holmes?

A. The serial numbers are written.

Q. The serial numbers are recorded?

A. Yes, sir.

Q. Are the denominations recorded?

A. Yes, they were.

Q. When were these lists made out, do you know?

A. They were made out in—not too long after we opened the branch, because that is one of the first things we did, is set up the marked money, as we call it.

81 Mr. EDDY. Your Honor, might I ask that the witness speak a little louder? I have difficulty hearing her.

The COURT. Will you speak just a little louder, Mrs. Holmes? The acoustics in this room are pretty bad, and then on top of that they saved some money by putting in an air conditioning system here that sounds like a jet plane.

By Mr. PORTERFIELD:

Q. Now, Mrs. Holmes, after the cards were made out or the money was recorded and those lists were made out, where were the cards kept?

A. I put them in the vault which is controlled by double custody. In other words, two keys are required to open the vault.

Q. All right. Now have you ever since the lists were made out, checked the actual currency against the lists?

A. Yes, I have, periodically.

Q. Periodically that is one of your functions?

A. Yes.

Q. And before the 14th of March 1963 had you checked the currency against the lists?

A. Yes, I had, about three months previously.

Q. And did the lists of serial numbers at that time still correspond to the written record that you made?

A. Yes, they did.

82 Q. And was all of the money that was represented on these lists missing after the 14th of March robbery?

A. Yes, it was.

Mr. PORTERFIELD. I am going to offer them in evidence.

Mr. EDDY. Before they are received, your Honor, I would like to have an opportunity to cross-examine the witness.

The COURT. Very well, we will leave them for identification at this time.

Mr. PORTERFIELD. Thank you. I have no further questions.

89 Redirect examination by Mr. PORTERFIELD:

Q. Mrs. Holmes, this 080 is sort of like a log book in which you enter the various dates that you perform these duties.

A. Yes.

Q. And had you checked these serial numbers before December of 1962?

A. Yes, sir. There is another date on there. In fact, I believe there is two other dates; I believe one is in April, and I don't remember the exact date it was.

Q. All right. But, again, you have a recollection in your mind of having checked them, is that right?

90 A. Yes, sir.

Q. Was there any deviation in any of those dates—

A. No, sir.

Q. Of money that was maintained at the tellers' windows and the lists that you prepared?

A. No, sir.

Offers in evidence

Mr. PORTERFIELD. All right. May I offer those in evidence, your Honor, at this time?

The COURT. They will be received and marked Government's Exhibits 5-A, 5-B and 5-C as heretofore marked for identification.

(Documents referred to marked Government's Exhibits 5-A, 5-B and 5-C and received in evidence.)

By Mr. PORTERFIELD:

Q. Now you have this log book at the bank, this 080 record at the bank, is that correct?

A. Yes.

Q. And you would be willing to produce that on subpoena if requested, is that right?

A. Yes, sir.

Mr. PORTERFIELD. Thank you. I have no further questions.

Mr. EDDY. No further questions.

100 RAY MILLER, called as a witness on behalf of the Government—Sworn:

Direct examination by Mr. PORTERFIELD:

Q. Your name is Ray Miller and you are a Special Agent with the Federal Bureau of Investigation, is that correct?

101 A. That is correct.

102 Q. Now, did you then show the pictures to the employees at the bank?

A. Yes, sir, I did.

Q. Do you have the pictures with you that you showed them?

103 A. Yes, I do.

Q. And were they pictures of anyone—who were they pictures of?

A. They were pictures of Carl Westover taken March 21, 1963.

Q. And did the people to whom you showed them, did you ask them to identify the pictures?

A. I showed them the pictures to see if this was the man that they had referred to previously.

Q. And what did they tell you in that regard?

A. They all said that was the man.

Mr. EDDY. I object to that, what this witness may have said, your Honor.

The COURT. Perhaps what they said is not admissible, but he can state whether they did or did not identify him.

Mr. PORTERFIELD. I asked him if they could, your Honor.

The COURT. What you asked him was to tell what they said.

Mr. PORTERFIELD. If I did, I am sorry. I will then rephrase it and limit the question to ask this witness if the people to whom he showed the pictures at the bank and Mrs. Ousley at her home identified the person in the picture.

A. They did.

Q. And who was the person they identified?

A. Carl Westover.

Q. All right. Now, may I see the pictures, please?

(Witness produces photographs which were shown

Mr. Eddy.)

104 By Mr. PORTERFIELD:

Q. Do you know when these pictures were taken, Mr. Miller?

A. They were taken on March 21, according to the date on them.

Q. Now, would you look at these two photographs I am handing you and I will ask you if those are the pictures you showed to the witnesses who previously testified?

A. Yes, they are.

Offers in evidence

Mr. PORTERFIELD. May I offer these in evidence, your Honor, then as Prosecution's next in order.

The COURT. Government's Exhibits 9 and 10 in evidence.

(Two photographs of Carl Westover were marked Government's Exhibits 9 and 10 and received in evidence.)

Mr. PORTERFIELD: Thank you. No further questions.

Cross-examination by Mr. EDDY:

Q. When did you first get possession of Exhibits 9 and 10, Mr. Miller?

A. I can't give you the exact date. As I say, it was subsequent to the 21st of March. They were photographs taken of Westover on the day following his arrest in Kansas City.

Q. They arrived in Sacramento by mail, I assume?

A. That is correct.

Q. And you, among other agents, were working on this case, is that true?

A. That is correct. It was assigned to me. It was
105 my specific responsibility.

Q. You were primarily responsible for it; however, you did not do all the investigation yourself, did you?

A. No, I didn't.

Q. Now, when these pictures arrived, am I correct in assuming that you then within a few days, perhaps within a few hours, took them out to the bank and showed them to the witnesses who have already testified?

A. It was several days later.

Q. And when you showed these pictures did you show them to more than one person at a time?

A. No, I did not. I will have to explain that, however. I showed the pictures first to Mr. Peter Patella at his desk, and then subsequent tellers were called and shown the photographs; but by the time the last one got there there were three other people standing at the desk, people who had already looked at the photographs.

Q. Did you interrogate Mrs. Ousley, who was a witness in this case?

A. Yes, I did.

Q. As a part of your investigation did you read a report in writing that she made shortly after the robbery occurred?

A. No, I never saw that.

Q. You have never seen that?

A. No.

106 Q. When did you first interrogate her?

A. Within the first hour after the robbery, probably more like 40 to 45 minutes after the robbery had been committed.

Q. Did you interrogate her at the branch bank?

A. At the bank, yes.

Q. Where did this occur there?

A. This occurred at a desk on the officers' platform.

Q. You asked her to give you a written statement?

A. Yes, I did.

Q. Do you have that statement?

A. I have it there at the Counsel table, yes.

Q. May I see it?

(Witness produced a document.)

Mr. EDDY. I will take up another topic, your Honor, I don't want to waste the Court's time, if I may see it at the recess.

* * * * *

128 WILLIAM FRANK LINHART, called as a witness on behalf of the Government—Sworn:

The CLERK. Your name?

The WITNESS. William Frank Linhart.

Direct examination by Mr. PORTERFIELD:

Q. Will you tell us your business or occupation, Mr. Linhart?

A. I am presently employed as a Detective of the Kansas City, Missouri Police Department.

129 Q. Were you employed as a detective or as a police officer for Kansas City on the 20th of March 1963?

A. I was, sir.

Q. And on that date did you have occasion to see the Defendant, Mr. Westover, who is seated at the counsel table here?

A. I did, sir.

Q. Is it correct that you arrested him on that date?

A. That is correct, sir.

Q. And would you tell us, please, the circumstances of the arrest, where you arrested him, who was present, and what he was doing at the time you arrested him?

A. The Defendant was arrested at 19th and Main, Kansas City, Missouri, at approximately 9:45 P.M. on March the 20th, 1963.

Q. Was he on the street walking, or was he with someone or how was he situated at the time he was arrested?

A. He had just entered an automobile, sir, at that location, 19th and Main.

Q. How do you describe that automobile?

A. The automobile was a '57 Ford convertible, red color, and it bore California license 1963 issue LJK 502.

Q. Now, at the time you arrested the Defendant could you tell us, please, what name he gave you?

A. The first name the Defendant gave us at the time of the arrest was George E. Yanes.

Q. Did you later ascertain that his name was Westover?

130 A. It was ascertained yes, sir.

Q. And did he tell you that his name was Westover later?

A. That is correct, sir.

Q. And did you arrest him on the basis of a Federal complaint or was it in connection with a local matter that you arrested him at that time and place?

A. The arrest was effected in connection with local matters, also reports from the local F.B.I. office in Kansas City, Missouri that the man was wanted on a felony warrant from the State of California.

Q. I see. And was he held after his arrest in your custody? By that I mean in the custody of the State or city officials there, or city authorities, or was he held and turned over immediately to the Federal Agents?

A. The Defendant, Mr. Westover, was in the custody of the Kansas City, Missouri Police Department, sir.

Q. And to your recollection about how long did he remain in your custody?

A. After the booking I could not estimate, sir.

Q. I see. At any rate, he wasn't turned over immediately to Federal authorities, is that correct?

A. Not to my knowledge, no, sir.

Q. Now when you arrested the defendant did you search him or the automobile?

A. Both the defendant and the automobile were searched, sir.

131 Q. Can you tell us whether the Defendant had any money, that is, currency, on him at the time you arrested him?

A. At the time of the arrest the Defendant had \$619.00 in his possession, sir.

Q. I see. What happened to this money? That is, what did you do with the money that you found on his person at the time he was arrested?

A. The money on his person, plus two extra dollars which was found in the car beneath the floor board of the rear seat, was placed in an envelope, sealed and placed in the property room of the Kansas City, Missouri Police Department by myself.

Q. I see. I am going to show you a photocopy of a report of money and property recovered, and ask if this is the property report or copy of a property report maintained by the Kansas City Police Department?

A. This is a copy of the original report maintained by the Kansas City, Missouri Police Department.

Q. And is that the report that was prepared in connection with the money that you found on the Defendant and turned in to the property room?

A. It is, sir.

Offer in evidence

Mr. PORTERFIELD. I would like to offer this in evidence as Prosecution's Exhibit next in order.

Mr. EDDY. Your Honor, this is only a copy.

By Mr. PORTERFIELD:

Q. Is the original available?

132 A. It is, sir.

Q. Do you have it?

A. I do have it.

Q. May we see the original, please, so Counsel can compare it?

(Witness produced a document which was handed to Mr. Eddy.)

Mr. PORTERFIELD. Is there any objection, having seen the original and the copy?

Mr. EDDY. No objection.

The COURT. Let it be marked Government's Exhibit 11, there being no objection, in evidence.

(Document referred to was marked Government's Exhibit No. 11 and received in evidence.)

By Mr. PORTERFIELD:

Q. Officer Linhart, I am going to show you Prosecution's Exhibit 4 for identification, this top coat, and ask you if you saw a top coat similar to this at the time the arrest was made?

A. I did see a topcoat similar to that, yes, sir.

Q. I am going to call your attention to the bottom of the top coat, to what appears to be a cleaning tag on that, and ask you to read the name on that, and ask you if you recognise that portion of it?

A. The name on this is Yanes, Y-a-n-e-s, with four numerals, "5-805".

Q. Had you observed that at the time you originally saw the coat? That is, the name tag?

133 A. I did not sir, but that is the name the Defendant stated.

Q. That is the name that the Defendant gave to you when you first arrested him, is that correct?

A. That is correct.

Mr. PORTERFIELD. I have no further questions of this witness.

Cross-examination by Mr. Eddy:

Q. Where did you find the money that you have already testified about? \$621.00.

A. \$619 of it was on the person of the Defendant Westover, two additional dollars was found wedged in between the floor board and the seat of the vehicle he occupied, sir.

Q. Were those \$1.00 bills?

A. The denominations of all the money, sir?

Q. No, the ones you found in the automobile.

A. Yes, they were, they were two \$1.00 bills.

Q. Did you work this alone, or did you work it with somebody else?

A. There was another officer present, Captain Mark Ruckel, of the Kansas City, Missouri Police Department.

Q. He was present at the time the arrest was made?

A. That is correct, sir.

Q. Who searched the Defendant?

A. Captain Ruckel.

134 Q. Where did this search take place?

A. It was immediately following his arrest.

Q. And who searched the automobile?

A. I did, sir.

Q. What else did you find, if anything, in the possession of the Defendant besides money?

A. Personal things. He did have a bill fold.

Q. He had a bill fold?

A. That is correct, sir.

Q. Now, when this money was taken from his possession by the captain do you have any idea what became of it?

A. Sir, after it was found by the Captain, Westover retained possession of the money until he was taken to headquarters.

Q. It was given back to him?

A. It was in his possession, yes, sir. That is, he——

Q. When you say it was in his possession, do you mean it was in his immediate presence?

A. It was in his possession.

Q. Well, was it in his pocket?

A. It was, sir.

Q. It was. Who put it in his pocket?

A. Once the money was found he claimed possession of the money and ownership, it remained in his possession until we got to headquarters.

Q. Which pocket was it in?

135 A. When it was found, sir?

Q. Well, when it was—yes, I will say what pocket was it in when it was found?

A. It was found, a portion of the money was found in the upper coat breast pocket.

Q. Where was the rest of it found?

A. There was some in his bill fold, too.

Q. And was this money counted at the time?

A. At the time of his arrest?

Q. Yes, on the street.

A. No, sir.

Q. Was the money all put together then or was it kept in separate parts as it had been found?

A. It was put together, sir.

Q. All right. Who put it together?

A. I did.

Q. And then what was done with the money?

A. It was placed on the property slip in an envelope, sealed and placed in the property room of the Kansas City Police Department.

Q. I mean on the street there now, right after the arrest, after the money was removed and it was all put together, what was done with it?

A. Sir, the money wasn't put together at that time, at the time of the arrest.

136 Q. It was observed at that time?

A. It was observed at that time.

Q. Was it put back in the Defendant's pocket then?

A. The Defendant had possession of it, yes, sir.

Q. I know you keep saying "possession" but that is sort of a legal conclusion. I want to know exactly where the money was.

Mr. PORTERFIELD. I object to the statement made by Counsel, your Honor.

The COURT. Overruled. Proceed.

Q. Where was the money actually placed physically after it had been observed on the street? Do you understand my question?

The COURT. Mr. Linhart, was the money returned to the Defendant there on the street?

A. It was sir.

The COURT. All right, what did he do with it, if you know?

A. He put it back in his pocket, sir.

By Mr. EDDY:

Q. Do you know which pocket?

A. That I could not say.

Q. Was the Defendant placed in—were handcuffs used on the Defendant at that time?

A. That I don't recall, sir, because Captain Ruckel transported the prisoner.

Q. Were you in the same automobile?

A. I was not, sir.

137 Q. What did you do then after the prisoner got in the automobile with the Captain?

A. I proceeded to drive the defendant's car, sir, to headquarters.

Q. How long did it take you to get to headquarters?

A. Approximately five to ten minutes.

Q. And when you got there had the Captain arrived?

A. He was waiting in the garage with the Defendant.

Q. And then what did you do?

A. I searched the car again in the garage at the headquarters building.

Q. I assume the Captain took the Defendant up to book him, is that right?

A. No, sir.

Q. Where did he take him?

A. The Defendant was present with the Captain and myself.

Q. For how long?

A. All the time until I finished searching the car. The car was then removed. The Captain, the Defendant and myself, proceeded up to the No. 1 Detective Room.

Q. What was done there?

A. At that time we notified other units of the Department who had reports implicating him in recent hold-ups in their Districts.

Q. What was done with the person of the Defendant then with his property at this time, if anything?

138 A. The Defendant remained in the office with myself except for a special show.

Q. What is a special show?

A. It is a special line-up or show where a subject is placed in amongst other men of his compatible weight, size, and height, for identification purposes.

Q. You say you had such a line-up on the day of the arrest of the Defendant?

A. That same evening, sir.

Q. And he remained in the office of the Detective Department 1 from that time, the time he was brought there, until the line-up, is that right?

A. Until the line-up, yes, sir.

Q. And did he continue to wear the clothes in which he was arrested from the time he was taken to the Detective Department 1 until the line-up?

A. The same clothes were on the Defendant, yes, sir.

Q. What about this \$621.00, where was it at the time of the line-up?

A. That I could not recall, sir.

Q. When was it taken from his person?

A. Just prior to his booking.

Q. When was he booked?

A. He was put on the books at approximately 11:45.

Q. After the line-up?

139 A. Yes, sir.

Q. Were you present when the money was taken from his person?

A. I was, sir.

Q. Were you present when he was put on the book?

A. I was, sir.

Q. When the money was taken from his person what was done with it?

A. It was counted by the Defendant and myself, sir.

Q. And then what?

A. Placed by myself in an envelope, sealed, placed on a property slip and put in the Police Property Room.

Q. Did the Defendant get a receipt?

A. He did not, sir.

Q. When you put it in this envelope did you identify the envelope in any way?

A. Except to put the general information that is the form on the envelope,—“name, type of recovery, currency,” and so forth.

Q. Was this on a slip of paper inside the envelope, or was it written on the outside of the envelope?

A. It was written on the outside of the envelope, sir.

Q. Did you write that there yourself?

A. I did.

Q. Did anybody else write on it?

A. Not to my knowledge.

Q. And then you sealed the envelope, is that right?

140 A. That is correct, sir.

Q. When is the next time you saw that envelope?

A. I haven't seen it since, sir.

Mr. EDDY. Oh. No further questions.

Redirect examination by Mr. PORTERFIELD.

Q. What was the Defendant booked for when he was booked in at Kansas City?

Mr. EDDY. I think I am going to object to that, your Honor.
The COURT. The objection will be sustained.

By Mr. PORTERFIELD:

Q. And what happened to his automobile, Officer Linhart?

A. The automobile, sir, was impounded and taken to the Police lot.

Q. That is the storage lot that is maintained by the Kansas City Police Department?

A. That is correct, sir.

Mr. PORTERFIELD. I have no further questions, your Honor. May this witness be excused?

Mr. EDDY. I have one question.

The COURT. Very well.

Recross examination by Mr. EDDY:

Q. However, when he was booked he was booked for
141 Kansas City, not for the Federal Government, isn't that true?

A. Sir, at the time of his booking the report read that he was held for the Kansas City, Missouri Police Department and the F.B.I.

Q. Do you have a record of that booking entry?

A. Not on me, sir.

Q. Is it here in Sacramento?

A. The original report, yes, sir.

Q. It is here. Is it available to you? Can you produce it in a minute or two, or by this afternoon?

A. I can, sir.

Mr. PORTERFIELD. Perhaps we better clarify this. Are you referring to your arrest report or to the original booking sheet when you say the record is available?

A. To my arrest report.

Mr. PORTERFIELD. Not to the original booking report, that is in Kansas City, isn't it, or is it here?

A. Sir, I would have to look through my records on that.

Mr. EDDY. Would you bring your arrest report here?

Mr. PORTERFIELD. I am going to object to this, your Honor.

The COURT. The objection will be overruled.

Mr. PORTERFIELD. Very well. Now you want the witness to ascertain if he has the booking sheet?

Mr. EDDY. Well, I will ask him that again, too.

142 Mr. PORTERFIELD. We can do it now.

The COURT. Where are they, right here in the court room, or in the office?

A. They are here in the court room, your Honor.

The COURT. Well, let's see what you can find. Step down and do whatever you need to get the reports?

(Witness produced the documents.)

Mr. PORTERFIELD. The witness does have the original booking sheet, your Honor.

The COURT. Do you want to look at them, Mr. Eddy?

Mr. EDDY. Yes, I would like to, your Honor, if I may.

The COURT. You may approach him and get them.

(The documents were handed to Mr. Eddy.)

By Mr. EDDY:

Q. Do you have the booking record? Is this it?

A. This is the original booking record, yes, sir.

Q. Well, sir, this I believe—

May I have this marked for identification, your Honor?

The COURT. Yes, and there will be no objection, I assume, to having it photocopied during the noon hour so Mr. Linhart can take the original back.

Mr. EDDY. No objection.

Mr. PORTERFIELD. I have no objection to putting it in evidence. However, I think we can stipulate, however, it can be photocopied.

143 The COURT. Yes, he has already stated that. Defendant's Exhibit B in evidence and, Mr. Clerk, during the noon hour make a photocopy of that and substitute it for the original and return the original to Mr. Linhart.

(Document referred to was marked Defendant's Exhibit B and received in evidence.)

By Mr. EDDY:

Q. Mr. Linhart, there is a statement here as the reason for the booking in four lines, all capital letters, isn't that true?

A. There is, sir.

Q. Would you read that, please, out loud to the Jury.

A. "Booked for investigation check in connection with the holdups of the Murphy Finance Company, 6226A Troost, which occurred on 2-4-63, Complaint No. 395206, and robbery of the New York Bakery, 7016 Troost, which occurred on 3-5-63, Complaint No. 395531. Also possible outside warrants, California. Subject occupying '57 Ford, California LJK 502.

"Hold for No. 1 D.U. No. 2 D.U."

Q. Now, may I ask you if these two complaints—both Troost Street addresses, is that right?

A. They are, sir.

Q. Were those the subject matter of the special show or lineup which you had after the Defendant was arrested?

A. One of them was, sir.

144 Q. One of them was. This booking was primarily on those two Complaints, those Troost Street addresses, isn't that true?

A. Also outside warrant from California.

Q. Also possible outside warrant, as you read it, is that correct?

A. That is right.

Q. Nothing about a Federal hold in that particular document which has been admitted in evidence as Defendant's Exhibit B?

A. No, sir.

Q. Is it not true, sir, that the question of possible Federal request for this defendant occurred after he had been booked, rather than before?

A. It is on my original report here.

Q. Well, I am asking you a direct question now. If you want to refer to a report, go ahead, but please do not read from it, only give me that which you remember and believe to be true under oath at this time.

A. If I may read my report, sir.

Q. You may refresh your recollection—

A. Refresh my recollection—

Q. But please don't read from it unless someone has asked you to and the Court has allowed you to, sir.

A. Following the man's booking I received a call from Agent Dobbs of the F.B.I. office, Kansas City, Missouri, requesting that the subject be held for them also.

145 Q. And would that be for questioning?

A. Pardon me, sir.

Q. Would that be for investigation?

A. For questioning.

Q. Yes. And do you know if this was in relation to any particular offense?

A. That I couldn't state.

Q. Well, perhaps then it was just for general investigation?

Mr. PORTERFIELD. I will object to the question as argumentative and it has been asked and answered.

The COURT. Sustained.

Mr. EDDY. May I see the arrest report which you have just refreshed your recollection with?

A. (Witness produced document.)

Mr. EDDY. I won't stand here. May I have a moment to look over this?

The COURT. Yes, you certainly may.

Mr. EDDY. May I approach the witness, your Honor?

The COURT. Yes, you may.

Mr. EDDY. We have to read from the same document.

The COURT. You may.

By Mr. EDDY:

Q. This was signed by yourself, is that true?

A. That is right, sir.

Q. Signed "William Linhart"?

146 A. That is right.

Q. And this is your signature?

A. That is my signature.

Q. Now, regarding the \$621, does it not say here a total of \$621 was placed in the Police Property room on property slip No. D-2356?

A. That is correct.

Q. At that time you had no knowledge that anyone might be interested in this money as evidence, did you?

A. Except that he was booked in the Kansas City, Missouri Police—he was booked in Kansas City, Missouri on the robbery charge.

Q. There is nothing in your report about placing this in a sealed envelope, is there?

A. No, sir.

Q. It says that it was placed on a property slip?

A. That is correct, sir.

Q. Also I want to call your attention to another portion of this report: "Westover's car was towed to the Police lot by car No. 131, Officers J. Willoughby and R. Roberts," is that correct?

A. That is correct.

Q. It is my recollection on direct testimony you stated that you drove—

147 Mr. PORTERFIELD. I object, your Honor, that is a misstatement of the witness' testimony. He said that he drove the car to Police Headquarters and then it was taken from there.

The COURT. Well, let him finish the question. I don't know what the question is.

By Mr. EDDY:

Q. Calling your attention to this portion of your report which has just been read, "Westover's car was towed to the Police lot by car 131, Officers J. Willoughby and R. Roberts," it is my recollection of your testimony that you drove the car. Does this refer to some other transportation of the vehicle?

A. Sir, I drove the car from 19th and Main, the place of the arrest, to the No. 1 garage in the basement of Headquarters building. From there the car was towed to the Police lot.

Mr. EDDY. I have no further questions.

The COURT. Mr. Porterfield?

Mr. PORTERFIELD. Yes, your honor.

Redirect examination by Mr. PORTERFIELD:

Q. Officer Linhart, in this line-up or show that was conducted after the Defendant's arrest, was he identified by anyone in connection with the local charges?

A. He was.

Q. Are those local charges still pending against the Defendant in Kansas City?

A. We do have warrants.

148 Q. And in connection with the money—may I have the property slip—your report which Mr. Eddy has referred to—you indicated in your report that the money was placed on the property slip. You don't mean that the bills were placed on this property slip and then handed in to the police property room, do you?

A. No, sir.

Q. All right. Will you explain what you do mean when you say the money was placed on the property slip?

A. The money itself was placed in an envelope, sealed. By my report, to condense it, we have a standard form on the Police Department in Kansas City, Missouri for the placing of property, or I should say the listing of property on this service slip to show what the contents of the envelope may be, or whatever articles are in question.

Q. All right. So in other words, when you say the money was placed on the property slip, you simply mean that the amount of the money of this type was as indicated on this Exhibit 11, listed on the property slip, but the envelope containing the money was handed in probably with the same number that this property slip has marked on the outside of the envelope, is that correct?

A. That is correct, sir.

Q. And you did place the money in the envelope and sealed it?

A. I did, sir.

149 Q. As a matter of fact, do you ever hand in loose money to the property room that is recovered——

Mr. EDDY. I object to that as leading, your Honor.

The COURT. Sustained.

Mr. PORTERFIELD. All right, withdraw the question.

Q. Now, would you read in your report the paragraph commencing with the word "Recovered"? Just read that, please, as you have got it written there. Read the entire paragraph.

Mr. EDDY. I don't have a copy of this, Counsel. I wonder if I may——

Mr. PORTERFIELD. Well, I don't either. I am simply having him read the whole paragraph which you had him read a portion of.

Q. It is the paragraph starting with "Recovered" and ending with "Property slip D-2356". I think on redirect examination we are entitled to put the thing in its proper context.

Mr. EDDY. I have no objection to that paragraph being read, but until I approached the witness I did not know what it was.

The COURT. All right, go ahead, and read the whole paragraph.

A. (Reading.) "Recovered from Westover's person was \$619 in currency for which he could not account for. The currency was in the following denominations: Fourteen \$20 bills, four \$10 bills, fifty-nine \$5 bills and four \$1 bills. Found on the rear floor boards of the auto were two \$1
150 bills. This money, a total of \$621, was placed in the Police property room on property slip No. D-6856." property room on property slip No. D-6856."

Mr. PORTERFIELD. I offer this report in evidence, your Honor.

Mr. EDDY. Object to it. It concerns other material which is irrelevant.

The COURT. It will be marked for identification only. Government's Exhibit 11 for identification. Is there any objection that the Clerk also make a photocopy of this and substitute the photocopy for it, Mr. Eddy?

Mr. EDDY. No objection, your Honor.

The CLERK. Twelve.

The COURT. Twelve, that is right. I don't know what I said, but it should be twelve.

(Document referred to was marked Government's Exhibit No. 12 for identification.)

By Mr. PORTERFIELD:

Q. Now, in connection with your search of the Defendant's car did you find or locate any other property which you noted in your report other than the money?

Mr. EDDY. I am going to object to that, your Honor, as having no relevancy to this case.

Mr. PORTERFIELD. Well, Counsel has referred to this report, your Honor, on his cross-examination, and I believe that we are entitled to develop it fully, because he has gone into it.

151 Mr. EDDY. May it please the Court, although Counsel for the Defendant may have used the report made for cross-examination, I do not believe it makes all the contents of the report admissible, nor does it open up subject matters which might be on the report which have not been touched upon by the Defendant on cross-examination.

The COURT. I think Mr. Eddy's position is well taken.

Mr. PORTERFIELD. Very well. I have no further questions.

Mr. EDDY. I have a question or two of this witness, your Honor.

The COURT. Is this a lawyer's question or two, or is it just two questions?

Mr. EDDY. I think it is a lawyer's question or two.

The COURT. All right. Then we better just take the noon recess.

Ladies and gentlemen of the jury, we will stand in recess to the hour of 2:00 P.M. You will remember the admonition of the Court heretofore given.

(Thereupon a recess was taken until 2:00 P.M. of the same date.)

152 AFTERNOON SESSION—JUNE 11, 1963—2:00 P.M.

The COURT. The Jurors are all present.

Mr. PORTERFIELD. Mr. Linhart, will you resume the stand, please?

The COURT. Yes, Mr. Linhart.

WILLIAM FRANK LINHART, resumed the witness stand.

Recross examination (resumed) by Mr. EDDY:

Q. I believe that this morning on direct examination you were asked the question if you had any warrants on this defendant at this time. Do you remember that question? I don't believe that machine works, does it, Mr. Clerk, or your Honor.

The COURT. It does, but not very good.

A. If we had any warrants presently, on the defendant?

By Mr. EDDY:

Q. Yes.

A. We do, sir.

Q. Now, let me ask you this, however: In one of the exhibits here, I think it is Defendant's A or B, perhaps——

The COURT. What are you looking for, Mr. Eddy?

Maybe I can help you.

Mr. EDDY. Here it is, your Honor. It is fourteen inches long, and the original was only five. It has got me confused by its size.

153 The COURT. Well, it is probably in the spring. It has grown.

By Mr. EDDY:

Q. Defendant's Exhibit B I believe to be a photostatic copy of the booking sheet that you brought into Court?

A. Yes, sir.

Q. Now in this—two complaints are referred to here, Complaint No. 395206, which is on Troost Street, and 395531, isn't that right?

A. That is correct, sir.

Now, it is true, is it not, that those complaints were dismissed?

A. I have no knowledge of them being dismissed, sir.

Q. It is true, is it not, that shortly after the arrest of this defendant and his booking on these State Complaints, the Defendant was taken from State custody and placed into Federal custody, isn't that true?

A. I am assuming, sir.

Q. You don't know of your own knowledge?

A. I have no knowledge of that except that he is in the Federal Court right now.

Q. Well, even while he was in Kansas City is it not true that

he was removed from State custody and placed into Federal custody?

154 A. Again, sir, I can't answer that. I have no knowledge of it except that he is in Federal Court now.

155 By Mr. EDDY:

Q. Officer, in addition to discussing the two alleged Kansas City crimes with this defendant, you also discussed the fact that he was wanted by the Federal Bureau of Investigation with this Defendant, did you not?

A. I did not, sir.

Q. Did anyone in your presence discuss with him the fact that he was wanted by the Federal Bureau of Investigation?

A. Not in my presence, no, sir.

157 BILLY TROLLOPE, called as a witness on behalf of the Government—Sworn:

The CLERK. Your name, sir?

The WITNESS. Billy Trollope.

Direct examination by Mr. PORTERFIELD:

Q. Will you tell us your business or occupation, Mr. Trollope?

A. For the Kansas City, Missouri Police Department.

Q. Were you so employed as a police officer on the 20th of March, 1963?

A. Yes, sir, I was.

Q. And on the days following, up to the present time?

A. Yes.

Q. Now, Officer Trollope, I want to call your attention to about the latter part of March or the first part of April, 1963 and ask if you had occasion at that time to observe Prosecution's Exhibit 11, which is Report of money and property recovered?

A. Yes, sir, I did.

158 Q. And is it correct that during the period that I have mentioned, in connection with that property slip that you examined some money, or, that is, the money that is represented or listed on that property slip?

A. Yes, it is correct.

Q. And who was present at the time you did so?

A. Agent Robert Mollet, of the F.B.I.

The REPORTER. How do you spell that?

A. I believe it is M-o-l-l-e-t.

By Mr. PORTERFIELD:

Q. Anyway, an F.B.I. Agent was with you at that time? Is that correct?

A. Yes, sir, that is correct.

Q. What was your purpose in looking at the money at that time?

Mr. EDDY. I will object to the purpose, your Honor.

The COURT. The objection will be sustained.

By Mr. PORTERFIELD:

Q. All right. What did you do with it when you looked at the money with Agent Mollet?

A. We verified the count of bills and verified the serial numbers.

Q. Do you have that list of serial numbers with you?

A. Yes, I have a list which I prepared with Agent Mollet.

Q. All right. Now, will you take—I don't think it is necessary to go through the whole list, but perhaps look at a couple of these bills and tell us whether these bills which I am now showing you are listed on that list which you prepared in company with Agent Mollet?

159 Mr. EDDY. May it please the Court, for the sake of the record I believe Counsel has produced in Court some green slips of paper which have not been identified.

Mr. PORTERFIELD. I haven't offered them for identification, your Honor. I felt this was preliminary.

The COURT. There is no showing as to what these bills that are here are at the present time.

Mr. PORTERFIELD. Well, I trust that my further questions will develop that, but I have no objection to having this marked for identification, if that is your purpose at this time.

Mr. EDDY. I believe that should be done.

Mr. PORTERFIELD. Very well. May we have marked as Exhibit next in order for the prosecution a packet of what appears to be United States currency. There is a \$20 bill on the bottom and a \$1 bill on the top.

The COURT. Government's Exhibit 13 for identification, United States Currency.

(Packet of currency marked Government's Exhibit No. 13 for identification.)

By Mr. PORTERFIELD:

Q. Now, would you look at the top bill, please, the \$1.00 bill and perhaps at the bottom bill, the \$20 bill, and tell us whether you find those bills on that list that you have?

Mr. EDDY. Maybe we better have the list marked too, your Honor.

160 Mr. PORTERFIELD. The list has been marked, hasn't it?

Mr. EDDY. No, this is the copy.

Mr. PORTERFIELD. Well, it is Exhibit 13 for identification, is the list that I am referring to.

The COURT. No, the currency is 13. What Mr. Eddy is speaking about is the list that Officer Trollope is referring to there.

Mr. EDDY. That is right, your Honor. If he is comparing that with something else, if there is any evidentiary value, that should be made clear, the list should be marked.

Mr. PORTERFIELD. To clarify the record, I apparently made an error, I intend to offer as Prosecution's Exhibit for identification this list dated 3-21-63 and bears the name at the bottom, "Robert A. Melotte", and purports to be a list of serial numbers of various denominations of currency.

The COURT. Government's Exhibit 14 for identification.

(List of serial numbers marked Government's Exhibit No. 14 for identification.)

Mr. PORTERFIELD. Now, Officer, would you please take Exhibit 14 for identification, a list of serial numbers, and tell us whether you find the bills which are exhibit 13 for identification recorded on that list?

A. You want just one now?

Q. Just one. I think that will suffice at the present time. Counsel can go through them if he wants.

A. The top bill corresponds with the last one on the
161 list here.

Q. That is the \$1 bill that you are referring to?

A. Yes, it is the \$1 bill, serial number—the way we marked them, silver certificate, and on your other bills other than the ones there may be a district in which they were issued, and then we listed the serial number also.

Q. You are now saying that on Exhibit 13, the currency, you find the serial number that is listed under the \$1 bill that is listed on Exhibit 14, the list of serial numbers, is that correct?

A. That is correct.

Q. How about the \$20.00 bill on the other side of the packet, do you find that on the list?

A. Yes, sir.

Q. Again, now, you are saying that you found the \$20 bill in the packet, Exhibit 13, which corresponds with the serial number recorded on Exhibit 14, the list of serial numbers, is that correct?

A. That is correct.

Q. Now, do you notice in Exhibit 13 that there are several bills marked with paper clips?

A. Yes, sir.

Q. All right. Would you extract those bills from the packet, please?

(Witness does as directed.)

Q. Are there four bills all together?

162 A. Yes, sir; there are two tens and two five dollar bills.

Q. I would like to hand you Exhibits 5-A, 5-B and 5-C for identification, which have previously been admitted in evidence and are lists of serial numbers, and they again are listed under denominations. Would you examine those bills with the paper clips on them and tell us whether you find any of those bills listed in Exhibits 5-A, B and C, which are also contained in Exhibit 13 for identification? Take your time, there are several lists there.

A. You want these compared with my list also, is that correct?

Q. I beg your pardon?

A. Do you want me to check these on my list as well as—

Q. If you would. Perhaps you can use a pencil and circle on your list—

Mr. EDDY. Your Honor, I am going to object to any marks being made on Exhibits which may later be offered in evidence in this case.

The COURT. May I suggest that these numbers be read off of these here and the jurors, if they want, can look at the list and see whether they are or are not.

Mr. PORTERFIELD. All right. Rather than marking the list, if you find any bills, would you read the serial numbers from Exhibits 5-A, B or C, and also the serial number that is recorded on Exhibit 14 for identification, the list that you prepared?

163 The COURT. Just read the serial numbers off the bills.
Mr. PORTERFIELD. Oh, there is a large number—well,
very well.

A. Do you want me to—

The COURT. I don't mean all of them. I mean you have got some that have got paper clips on them there and I assume there is a reason for that. Read the serial numbers off of those and then you can go from that.

A. We will start with the \$10 bills, the way we have them marked on our list is "A Federal Reserve note, the District is No. 7, the serial number is G-887267911-E—Edward—and it is a 1950 series B."

By Mr. PORTERFIELD:

Q. Do you find a bill with that serial number on Exhibit 14, the list that you prepared?

A. Yes, sir.

Q. Do you find a bill, a \$10 bill—or a serial number of a \$10 bill on either exhibits 5-A, 5-B or 5-C?

A. Yes, sir. It is marked 5-B.

Q. It is contained on the list marked 5-B then?

A. Yes.

Q. All right. Now would you read the serial number of the other \$10 bill and see if it is recorded on either of the lists?

A. The other one is also a Federal Reserve note, the District is 12, the serial number is L-13027710-C—Charles; it
164 is a 1950 series B as in "boy". I have found it on the list which I assisted in the preparation of.

Q. That is Exhibit 14?

A. Yes.

Q. Do you find it on Exhibits 5-A, B or C?

A. Yes, sir, it is also found on Exhibit 5-B.

Q. Thank you. Now would you check the \$5 bills in the same manner, please?

A. Five dollar bill, Federal Reserve note, District No. 12, serial number L—"love"—09663998, series 1950 B, "boy". Pardon me, there are 59 of those. It will take me longer.

The COURT. Take your time.

A. I have also found this one on my list.

By Mr. PORTERFIELD:

Q. That is again Exhibit 14, the list you assisted preparing, now?

A. Yes.

Q. Would you see if you can find it on 5-A, B or C?

A. Yes, sir, it is on Exhibit 5-A.

Q. All right, thank you. Now there is one more \$5 bill, is there not?

A. Yes, sir.

Q. Would you compare that with your list on Exhibit 14?

A. It is a \$5.00 bill, a Federal Reserve note, District No. 12, serial No. L, "love", 09919072, series 1950-B, "boy". I also located this one on Exhibit 14.

165 Q. Would you ascertain whether that is also listed on 5-A, B or C?

A. Yes, sir, it is the same as the other one, on Exhibit 5-A.

Q. On Exhibit 5-A. May the record show that you clipped the two \$5 bills to Exhibit 5-A and the two \$10 bills to Exhibit 5-B.

Now, is this money, including the bills which you have just identified or located on the money list, is that the same money that was reported on this report of money and property received at the Kansas City Police Department?

A. This list was prepared from the money which was placed on this.

Offers in evidence

Mr. PORTERFIELD. Thank you. Your Honor, I am going to offer the entire bundle of currency which is presently Exhibit 13, in evidence at this time, and I would like the record to reflect that there has been removed from it two \$10 bills and two \$5 bills, which have been attached as previously described to Exhibits 5-A and 5-B.

The COURT. I don't think you had better do that. I think they had better be put back. Put them on top so that they will be——

Mr. PORTERFIELD. Very well.

Mr. EDDY. I have an objection to the tender of this money and to this list at this time until after the cross-examination of this witness. I want to point out to the Court that

166 Counsel has not seen the money or the list at any time.

The COURT. Well, I will reserve my ruling. But let's put the money back so that they will be with their own exhibits.

Mr. PORTERFIELD. Yes. I am putting the two fives and two tens back, secured by the rubber band, in the packet of bills, Exhibit 13, which I have offered into evidence.

The COURT. All right.

Mr. PORTERFIELD. And I will also offer in evidence at this time Exhibit 14, that is, the money list prepared by this officer and the F.B.I. Agent.

Mr. EDDY. Same objection, your Honor.

The COURT. I will reserve my ruling on both of these until the cross-examination is concluded.

By Mr. PORTERFIELD:

Q. Officer Trollope, did you have occasion to go to—or to search a 1957 Ford automobile, red in color, I believe, at the Kansas City Police Department Police storage lot?

A. Yes. It was a convertible bearing California license.

Q. All right. I will show you now Prosecution's Exhibit 4 for identification, which is this topcoat, and ask you if you have seen this coat before?

A. Well, a coat fitting this description we found in the trunk of this automobile.

Q. You say "we". Who was present?

A. Agent Melotte and I.

167 Q. And I will call your attention to this tag on the hem of the coat and ask you if you observed that tag at the time you saw it in the trunk of the automobile?

A. Yes, sir.

Q. Does it appear to be the same?

A. Yes, sir.

Mr. PORTERFIELD. I will offer this in evidence, your Honor, as prosecution's exhibit 4.

A. I believe the make is a Sears brand also, I believe.

Q. Perhaps you can find the label in there?

A. Yes, it is.

Q. Is that the label that you saw and that you are now referring to?

A. Yes, it is a Sears brand.

Mr. PORTERFIELD. Your Honor, I will offer this in evidence as Prosecution's Exhibit 4.

The COURT. Let it be received and marked Government's Exhibit 4 in evidence as heretofore marked for identification.

(Top coat referred to was marked Government's Exhibit 4 and received in evidence.)

Mr. PORTERFIELD. I have no further questions.

The COURT. Mr. Eddy?

Mr. EDDY. May I take an opportunity to look at some of these exhibits that have just been offered?

The COURT. Yes, you may.

168 Mr. PORTERFIELD. I apologize to Counsel if I didn't show him that list before. I was under the impression I had, your Honor.

Mr. EDDY. Your apology is accepted, Counsel.

Mr. PORTERFIELD. Thank you.

Mr. EDDY. May I approach the witness, your Honor?

The COURT. You may.

Cross-examination by Mr. EDDY:

Q. Sir, this list is signed "Robert A. Melott." Are you acquainted with him?

A. Yes, sir.

Q. And your name appears on the body of this material as having been in the presence of Melott when he took off these serial numbers, is that right?

A. When we took them off. The list was prepared in this manner: I first went through all of the bills and read them off to him, at which time he wrote down the numbers, and then we reversed that and went through the procedures backwards to verify.

This report is signed by him and he states in here that he examined them in your company, isn't that true?

A. That is correct.

Q. Now how many \$20 bills appear on this list?

A. There should be fourteen, sir.

171 Q. Now do you recall on what day you examined this money?

A. It was the day following the Defendant's arrest. It was the 21st of March.

Q. And you recall where you were when you examined it?

A. It was in the Police property room.

Q. And is that a part of the jail?

A. No, sir, it isn't.

Q. Is that a place where the property belonging to prisoners is kept when they are incarcerated in the jail?

A. Yes. Would you like me to—

Q. Well, I will extend that with another question, if I may, Officer.

A. O.K.

Q. Is that where the ordinary property that is found in the possession of a person arrested is placed during the time he is in custody?

A. I will answer it this way: All property is placed in the property room for safekeeping.

Q. And this is that room——

A. Yes, sir.

Q. To which you are referring. Now what time of day or night was this examination, sir?

A. Shortly before noon on the 21st of March.

Q. How many people were present at the time that the examination was made?

172 A. There were three people who worked there. However, the examination was conducted by Agent Melott and myself.

Q. Now, where was the money when you first saw it?

A. In the property type envelope, which was tagged with the same property slip as has been entered.

Q. What kind of an envelope, please?

A. As I recall, we have several sizes. However, this one would be probably 10 to 12 inches long, and probably six inches wide.

Q. Was there anything in this envelope besides money,—a wallet, perhaps, or something like that?

A. I don't recall.

Q. Was this the type of envelope that is normally used to house or contain the property of inmates in the jail?

A. Yes, sir, we use this for various storings of property.

Q. Routinely?

A. Yes, sir.

Q. It might have car keys in it, it might have a wallet, might have a handkerchief?

A. Each one is individually tagged with the property slip, each envelope.

Q. And that identifies the prisoner from whom the property was taken, I assume?

A. It also identifies—it is not necessarily a prisoner. As I say, all property is tagged separately. If it is taken
173 from a prisoner it is tagged under his name, or if it is

recovered, say, on the street or from a car it is tagged either with the car or the owner's name.

176 TROY F. CAMPBELL, called as a witness on behalf of the Government—Sworn:

The CLERK. Your name?

The WITNESS. Troy F. Campbell.

Direct examination by Mr. PORTERFIELD:

Q. Will you tell us your business or occupation, Mr. Campbell?

A. I am a Detective assigned with the Kansas City, Missouri Police Department.

Q. And were you so employed on the 20th of March, 1963?

A. Yes, sir, I was.

177 Q. And on the days following that to the present time, I assume?

A. Yes, sir.

Q. Calling your attention to the 20th of March, 1963 did you have occasion to be at a hotel in Kansas City, Missouri on a particular assignment on that day?

A. Yes, sir, I did.

Q. Can you tell us, please, the name of the hotel and what your assignment was?

A. It was the Southland Hotel at 3517 Main. We were assigned to conduct a surveillance at that location.

Q. How long were you at that hotel maintaining this surveillance on that particular day?

A. Approximately three hours.

Q. Starting at what time?

A. Approximately 8:45.

Q. 8:45 in the evening or morning?

A. In the evening, yes.

Q. And that would mean then that you completed your assignment there around midnight or 11:45 at night, is that right?

A. Yes, sir.

Q. Now, were you watching or keeping a surveillance on any particular room or looking for any particular person at the hotel?

A. Yes, sir, we were.

178 Q. For whom were you looking?

A. Carl Westover.

Q. Is that the person who is seated here in the court room as a defendant?

A. Yes, sir, it is.

Q. And did you know whether he had a room in that hotel?

A. Yes, sir.

Q. And were you watching that room?

A. No, not especially. We were conducting a surveillance in the lobby, in the Manager's Apartment.

Q. Now, I am going to show you Exhibit 2 for identification, this weapon, and ask if you can identify that weapon or have seen it before?

A. Yes, sir, I have.

Q. And how do you identify it, Officer Campbell?

A. My initials engraved on the breach.

Q. Will you tell us, please, where and when you put your initials on that piece?

A. It was in room 506 of the Southland Hotel.

Q. And the time and place, please? Can you tell us the time?

A. Approximately 11:45 P.M. on the 20th.

Q. 20th of March, 1963?

A. Yes, sir.

Q. And how did you happen to find this weapon at that particular location?

179 A. At about 11:45 P.M. Detective Eldridge came to the hotel with a waiver of search of the room, which was signed by Carl Westover and also George Yanes. We then proceeded to room 506 in the company of the Manager, at which time we searched the apartment, found the gun in a suitcase in a closet of room 506.

Q. Do you have that consent to search with you?

A. Yes, sir, I do.

Q. May I see it, please?

(The witness produced a document.)

Mr. PORTERFIELD. I will show this to Counsel, your Honor. (Exhibiting to Mr. Eddy.)

Q. Have you seen this photocopy which was prepared of that consent to search?

A. Yes, sir.

Offers in evidence

Mr. PORTERFIELD. I am going to offer this photocopy which the witness has identified as the consent to search as Prose-

cution's next in order for identification, your Honor,—I believe I will offer it in evidence at this time.

The COURT. Is there any objection to the fact that it is a copy?

Mr. PORTERFIELD. I have compared the original—

Mr. EDDY. No objection to the fact it is a copy, your Honor.

The COURT. Is there any objection to it as an exhibit?

Mr. EDDY. No objection to it as an exhibit.

180 The COURT. All right, let it be received and marked Government's Exhibit 15 in evidence.

(The document referred to was marked Government's Exhibit 15 and received in evidence.)

By Mr. PORTERFIELD:

Q. In whose name was the hotel room in which you found the gun, who had registered—

A. The room was registered to George Yanes.

Mr. PORTERFIELD. Thank you. I have no further questions. I will offer the gun in evidence as Prosecution's Exhibit 2, your Honor.

The COURT. Let it be received and marked Government's Exhibit 2 in evidence as heretofore marked for identification.

(Gun referred to was marked Government's Exhibit 2 and received in evidence.)

The COURT. Mr. Eddy?

Cross-Examination by Mr. EDDY:

Q. When did you examine this room, sir?

A. Approximately 11:45 P.M.

Q. On what day, sir?

A. The 20th.

Q. Was this in the morning or afternoon? This 11:45.

A. P.M., in the afternoon.

Mr. EDDY. I have no further questions.

Mr. PORTERFIELD. No further questions, your Honor.
181 May this witness be excused?

Mr. EDDY. No objection.

The COURT. You may be excused.

Mr. PORTERFIELD. Your Honor, I notice it is approaching three o'clock. I have an additional witness in my office. He will be a rather lengthy witness, I suspect, and I feel at this time he will probably be the last Prosecution witness.

May I suggest a recess at this time?

The COURT. Very well. We will stand in recess for the afternoon recess at this time.

Ladies and gentlemen of the jury, remember the admonition of the Court heretofore given.

(Recess.)

The COURT. The jurors are all present. You may proceed.

Mr. PORTERFIELD. Thank you, your Honor. We will call Mr. Laughlin as the next Prosecution witness.

JAMES V. LAUGHLIN, called for the Government—Sworn:

The CLERK. Your name?

The WITNESS. James V. Laughlin.

Direct examination by Mr. PORTERFIELD:

Q. Tell us your business or occupation, Mr. Laughlin?

A. I am a special agent for the F.B.I.

Q. How long have you been with the Federal Bureau of Investigation?

182 A. Two years and four months.

Q. Calling your attentions to around the 20th and 21st of March, 1963 were you on duty as a special agent during that period?

A. Yes, sir.

Q. Did you have occasion on the 21st of March, 1963 to interview the Defendant, Mr. Westover, who is seated at the Counsel table here?

A. Yes, I did.

Q. And can you tell us the time and place and who was present, please?

A. It was March 21, 1963, on Thursday, I was present with Mr. William Piper of our office and also Mr. Carl Hanson.

Q. Are both of those gentlemen, Piper and Hanson, special agents of the F.B.I.?

A. Yes.

Q. Where did this interview take place?

A. At the Kansas City, Missouri Police Department.

Q. And to your recollection about what time of day was it?

A. To the best of my recollection it was near noon when the interview commenced.

Q. Now, in connection with the interview you had with the Defendant did he make a statement to you admitting his guilt and responsibility for two robberies in the City of Sacramento, California?

183 A. Yes, he did.

Q. Was that statement free and voluntary on his part?

A. Yes, it was.

Q. Was the Defendant under any duress or any threats, either expressed or implied by yourself or any other agents?

A. No, sir.

Q. Had he been informed of his rights?

A. Yes, he was.

Q. Were the statements reduced to writing?

A. Yes, sir, they were reduced to writing and signed by the Defendant, Mr. Westover.

Q. Do you have those statements with you?

A. I do.

Q. May I see them, please?

(The witness produced documents.)

Mr. PORTERFIELD. I am going to show the statements to Counsel, your Honor. [Handing documents to Mr. Eddy.]

I might advise Counsel I have two copies which I compared with these originals, which I can let him retain in his possession if he wishes, then we can proceed, perhaps.

Mr. EDDY. It will only take just a moment, your Honor.

The COURT. Very well.

Mr. EDDY. I haven't seen these before. I haven't identified the copy heretofore. I appreciate Counsel's offer and am willing to accept it but before he starts examination I would like to examine it.

Mr. PORTERFIELD. May I offer this for identification, your Honor, a statement dated March 21, as Exhibit 16 for identification, and another statement also dated March 21 as Exhibit 17.

The COURT. Government's Exhibits 16 and 17 for identification.

(Two statements referred to were marked Government's Exhibits 16 and 17 for identification.)

By Mr. PORTERFIELD.

Q. I will show you now Exhibits 16 and 17 for identification, Mr. Laughlin. Are those the two statements which were taken, and signed by him?

A. Yes, sir.

Q. Are those two statements, each of them, with reference to one of the robberies with which we are concerned here today;

that is, the Fort Sutter robbery and the Bank of America robbery?

A. Yes, sir.

Q. All right, would you please read to us the statement concerning the Fort Sutter robbery, please? And how is that marked,—16 or 17?

A. Sixteen.

Q. As Exhibit 16.

Mr. EDDY. Your Honor, I think that I am going to object to any reading of those statements until the statements themselves are admitted in evidence.

185 Mr. PORTERFIELD. Very well. I will offer them in evidence at this time, your Honor.

Q. I will ask the witness before I do if he recognizes or can identify this statement itself, and if he recognizes the signature of the Defendant?

A. Yes; Exhibit 16 was written by Agent Piper and witnessed by myself on the back page.

Q. Does your name appear on it?

A. Yes, yes. In fact, it is in my handwriting.

Q. All right.

A. And Exhibit No. 17 was written in my handwriting and again also witnessed by myself.

Offers in evidence

Mr. PORTERFIELD. I will offer 16 and 17 in evidence, your Honor.

The COURT. They will be received and marked Government's Exhibits 16 and 17 as heretofore marked for identification.

(Statements referred to were marked Government's Exhibits Nos. 16 and 17 and received in evidence.)

By Mr. PORTERFIELD:

Q. Now would you read Exhibit 16, please?

A. (Reading.) "I, Carl Calvin Westover, hereby make the following voluntary statement to William C. Piper, James V. Laughlin and Carl Hanson, who have identified themselves to me as Special Agents of the Federal Bureau of Investigation.

186 I have been advised that I do not have to make a statement and that any statement I do make can be used against me in a court of law. I have also been

advised that I have a right to consult an attorney. No threats or promises of any kind have been made to me.

"About 12:30 P.M., February 4, 1963, I entered the offices of Fort Sutter Federal Savings & Loan Association located on J Street, Sacramento, California. This place was located near the 2200 block on J Street.

"After entering the Savings & Loan Association offices, I approached a male employee who was standing behind a counter. I engaged him in a short conversation and then asked to speak to the Manager, as I wanted to make a loan.

"The man told me the Manager was away at that time, and that perhaps he could help me. He then led me to a table in front of the counter, where we sat down and talked for several minutes about a possible loan. During this time the man was explaining the loan procedures to me and the forms I would have to fill out.

"While we were still sitting at the table, I opened the left side of my coat and showed the man a gun I had tucked in my belt. Then told the man that it was a hold-up. He became nervous upon hearing this, so I talked with him at the table for a minute or two in order to calm him down. I told him that I didn't want to hurt anyone and that if he followed my instructions no one would get hurt.

"He then left the table and walked behind the tellers' counter. I walked to the front of the counter and watched him go from window to window filling a brown paper bag with money. I had previously given the paper bag to the man when we were sitting at the table. I was carrying this bag with me in an inside coat pocket when I first entered the bank.

"After the man had taken the money from the different cash drawers at the rear of the counter, I ordered him to go into the vault and get additional money, which he did.

"After filling the bag with the money from the vault, the man walked to the rear of the counter and handed the bag across to me. I then turned and walked to the front door of the building and left. When I left the building I walked and then ran to my car, a dark green 1953 Oldsmobile which was parked about a block and a half away. I later counted the money, and recall that it was between fifteen hundred and sixteen hundred dollars.

"I have read this three page statement, and it is true to the best of my memory."

Signed: "Carl Calvin Westover."

"Witnesses: William C. Piper, Special Agent, F.B.I., 32163; "James V. Laughlin, Special Agent, F.B.I., 32163; "Carl Hanson, F.B.I., 32163."

183 Q. Is any portion of that statement in the Defendant's own writing?

A. Yes, sir, the last paragraph:

"I have read this three page statement and it is true to the best of my memory," was written by the Defendant.

Q. Now, would you read Exhibit 17, please?

A. (Reading.) "Kansas City, Missouri, March 21, 1963.

"I, Carl Calvin Westover, make the following free and voluntary statement to James V. Laughlin, William C. Piper, and Carl M. Hanson, who have identified themselves as Special Agents of the Federal Bureau of Investigation. I have been advised that I do not have to make a statement and that any statement I make may be used against me in a court of law. I have been advised of my right to consult an attorney. No threats or promises were made to induce me to make this statement.

"I was born March 13, 1919, at Seattle, Washington. I am able to read and write the English language.

"On March 14th of this year I was in Sacramento, California, having just arrived by plane from Kansas City, Missouri at approximately midnight. I went to a parking lot near the State Capitol and picked up my 1953 green Oldsmobile. I drove around all morning, when I noticed the Bank of America

Branch Bank at 53rd Street and Folsom. I looked the
189 bank over for about an hour, and then parked my car on 52nd or 53rd Street, walking a little over a block to the bank. I immediately walked to one of the writing tables, took a deposit slip and wrote on the back of it. This is a hold-up. I want all your money. Cooperate and no one will get hurt,' or words to that effect.

"I got in line at one of the tellers' cages, I believe there were three. There were two or three people ahead of me when I noticed a bank official about 45 to 50 years old walking around behind the tellers' cages. I walked to the counter between the cages and motioned to this man to come and see me.

"I handed him the note and he read it. He said, 'What does this mean?' I said, 'It means what it says,' and opened my coat and showed him my gun, which I had stuck in my belt on my left side, nose down, and butt facing forward.

"He said to me, 'What do you want?'"

"And I said, 'I want your money,' handing him a brown paper bag which I had under my coat on my right side.

"He emptied all of the tellers' cash drawers of paper currency into the bag.

"I would like to mention also that I took the note away from him after he had read it.

"I believe I told him to step back from the counter and not to follow me. I then walked out of the bank and to my car.

I drove down town and parked near the Greyhound Bus Station, and about 15 minutes later got on a bus to San Francisco.

"In San Francisco I went to the Powell Street Garage, where I picked up the 1957 red Ford, which I drove to Kansas City, leaving San Francisco about midnight on the 14th.

"On the night of March 15th I stopped at Las Vegas and stayed at a hotel about four blocks from the Pioneer Club. At the hotel I counted the bank loot, which amounted to nearly forty three hundred dollars. I lost all but about \$1,000 gambling at various places in Las Vegas.

"I left Las Vegas on Saturday, March 16th, stopped at Albuquerque, New Mexico, on the 17th, and arrived in Kansas City on Monday, March 18th.

"I checked into the Southland Hotel on South Main Street.

"I was arrested by the Kansas City, Missouri Police Wednesday night, March 20th. I had about \$600 which was part of the Bank of America loot.

"I have read this four page statement, and it is true to the best of my memory."

Signed: "Carl Calvin Westover."

Witnessed: "James V. Laughlin, Special Agent, F.B.I. Kansas City, 32163; Carl N. Hanson, and William C. Piper."

Q. Is there any portion of that statement in the Defendant's own handwriting?

A. Yes, sir. The last paragraph, "I have read this four page statement and it is true to the best of my memory."

Q. Now, Agent Laughlin, at the time you took this statement from the Defendant, this was on the 21st of March, is that correct?

A. Yes, sir.

Q. And at that time had you or any of the Agents with you

received any other details from Sacramento regarding the two robberies that were referred to in the statement?

Mr. EDDY. I am going to object to that, your Honor, asking the man if he received certain information. That is not only leading, but it is hearsay, asking him whether or not he had received information is also hearsay.

The COURT. He may answer yes or no, but not the—

A. Just yes or no, your Honor?

The COURT. Just yes or no.

Mr. PORTERFIELD. You may answer my question, just yes or no.

A. The details, you said? Pardon me, I would like to hear the question again.

Mr. PORTERFIELD. Would you mind reading my question, Mr. Wight?

(Question read by reporter.)

Mr. EDDY. I am going to object to that as leading, your Honor.

The COURT. Overruled.

A. The answer again is "No."

192 Mr. PORTERFIELD. Thank you. Now, did you make any note at the time you interviewed the Defendant of any marks or other physical imperfections on his hands?

A. Yes. We—when we interview subjects, we take a description of them in their own words from them, and Mr. Westover showed us a tattoo of a bat in the web of his left hand, between the first finger and the thumb.

Q. And what color was that tattoo, to your recollection?

A. The customary blue.

Q. The tattoo blue, we can call it?

A. The tattoo blue.

Q. Now, I will show you Government's Exhibit 2 in evidence and ask if you have had an opportunity to show the Defendant this weapon?

A. That weapon was in the interviewing room during the interview.

Q. All right. Did you ask the Defendant any questions pertaining to this weapon?

A. Yes, we asked him how he obtained it. We asked him if that was the weapon that was used.

Q. And what was his response?

A. His answer was "yes".

Q. Thank you. Now at the time you interviewed the Defendant, in whose custody was he?

A. He was in the custody of the Kansas City, Missouri police Department.

Q. And do you know when he came into the custody of the Federal authorities?

A. Yes, on Monday, April 1, 1963.

Q. And at the time he came into the custody of the Federal authorities was there a Complaint or Warrant to bring him into the custody of the Federal authorities?

A. Yes, based on the present matter.

Q. That is, you had then received at Kansas City the Warrant for his arrest on the present charges, is that correct?

A. Yes, sir.

Q. And that was the first time that he was taken into Federal custody?

A. Yes, sir.

Mr. PORTERFIELD. Thank you. No further questions.

The COURT. Mr. Eddy?

Cross-examination by Mr. EDDY:

Q. Where were these statements taken, Mr. Laughlin?

A. On the second floor of the Kansas City, Missouri Police Department, one of the officers' offices, I believe, one of the Lieutenants or Captains' offices.

Q. At the time that these statements were taken, where was the defendant held in custody, if you know?

A. Sir, at the time the statement was taken?

Q. Yes.

A. He was in the custody of the Kansas City, Missouri Police Department, sir.

Q. Do you know if he was being impounded in the County Jail?

A. At the time the statements were taken?

Q. Yes.

A. He was not.

Q. Where was he then?

A. He was in the Police Department, sir. I believe he was transferred to the County Jail that day or the following day.

Q. Do you know when he had been arrested?

A. Yes, sir. Either early that morning or the night before. He was arrested by the Kansas City, Missouri Police, and I am not exactly sure, sir.

Q. Do you know if he had been booked into any jail before—

A. Yes.

Q. You talked to him?

A. Yes, we had been advised that he had been arrested in connection with two local bank—pardon me, local robberies, and was being held on those charges.

Q. What jail was he booked in?

A. The City jail.

Q. And he had not been booked—are you sure he had not been booked into the County Jail before he signed these statements for you?

195 A. Sir, he wasn't transferred to the County Jail until the following day. I do not think so. That was a local procedure, and I don't know. He was, of course, in the City Jail that day and the following day, I am sure.

Q. You have knowledge that the local charges against him have been dropped, have you not?

Mr. PORTERFIELD. I object, your Honor. This is beyond the scope of the direct examination.

The COURT. He may answer yes or no as to whether or not he has any knowledge on the subject. Not what somebody told him.

A. Well, no; in that case, no.

By Mr. EDDY:

Q. You don't know whether or not the charges that were pending against him at the time you took his statements have been since dropped?

A. Well, by knowledge, if your Honor means knowledge based on what somebody told me, I feel I know, but in response to your instruction—

The COURT. Not what somebody told you, it is only what you know, if you saw the records or if you were present in court when any proceedings were had, that is one thing, but if you are depending on what some officer or some agent told you you cannot testify.

A. The answer is "No."

By Mr. EDDY:

196 Q. Well, sir, it is my recollection that in your direct testimony you said that these statements were entirely free and voluntary. Now I want to ask you if you had knowl-

edge that at the time the Defendant signed these statements he had been promised that the local charges would be dropped.

Mr. PORTERFIELD. Your Honor, I object to this as prejudicial and without foundation.

The COURT. Overruled.

Mr. EDDY. I think we can go into the voluntariness of these statements, your Honor.

The COURT. Overruled. You may proceed.

A. No, sir, I had no such knowledge.

By Mr. EDDY:

Q. Had you received information from any local officers that such promises had been made to him at the time that he signed these papers?

A. No, sir.

Q. Have you received any information from the local officers that the charges that were pending against him at that time have since been dropped?

A. No, sir.

Q. Why were there two statements instead of one?

A. Sir, it is our custom, two bank robberies mean two cases, and we take two statements so one statement can go in one file and the other in another. That is the only—it is a matter of procedure.

197 Q. How many times did you talk to this defendant before he signed the statements that have been admitted as 16 and 17 in this case?

A. It was during the initial interview.

Q. How long did this interview take place, over what period of time, I should say, did this interview take place?

A. To the best of my recollection, it commenced shortly before noon, and probably was concluded at 2:00 or 2:30 in the afternoon. It took that time to write those statements.

Q. Do you mean to say that everything that he told you during that interval of time has been written down in these statements?

A. Yes, sir. They are written in his presence, and, of course, they are—let's say read out loud as they are written, and you know the Defendant is aware of what is being written down, and therefore that does take time, although on paper it doesn't look at such great length. It is not written in long-hand and shown to him, it is written in the process of the interview.

Q. Now do you now whether or not it was necessary for the Federal Government to obtain custody of this defendant by any subpoena duces tecum or any writ of habeas corpus or anything of that nature?

Mr. PORTERFIELD. I object to the question as ambiguous, your Honor, and further it calls for a conclusion of the witness.

198 The COURT. Answer it yes or no.

A. I would like to hear that question again.

Mr. EDDY. I will be glad to rephrase it.

The COURT. I think you better rephrase it, because I think it is compound in its present form. Rephrase it, but I will permit the question.

By Mr. EDDY:

Q. Do you know if it was necessary for the Federal Government to obtain custody of this defendant by the use of a process known as a Writ of Habeas Corpus ad Prosecurandum?

A. No, sir, I don't have knowledge to that effect, no. I know the Federal process, but I am not aware of these things that you mention.

Q. Do you know if the State authorities just simply turned over this defendant to the Federal Government without requiring the serving of a writ of Habeas Corpus?

Mr. PORTERFIELD. I object to the question, your Honor, on the ground it calls for a conclusion on the part of the witness.

The COURT. If he knows, he may answer.

Mr. PORTERFIELD. May I enter the further objection, your Honor, that it implies that there is such a requirement, and there is no foundation for that?

Mr. EDDY. I think the Court can take judicial notice of the usual processes of this Court.

199 The COURT. The Court can also take judicial notice of the fact that various governmental agencies have authority to pass Defendants from one jurisdiction to another. I don't know what is going on here. If this witness knows he may answer, but I don't want him to be telling what somebody else told him or what he surmises or suspects.

Do you know of your own knowledge how the Defendant got into the custody of the Federal authorities?

A. Well, I know there was a Federal Complaint filed here. I know that a warrant was issued, and I know that Federal Custody was taken on the basis of that warrant. I am not

familiar with any write concerning that transfer of custody. The Federal Government cannot take custody of anyone without a warrant authorized by the U.S. Attorney.

By Mr. EDDY:

Q. Do you know if the State complaints were dismissed in order for the Federal to take simple custody?

A. I do not, no.

Q. Do you know if the State of Missouri retained any holds on this defendant after he was given into Federal custody?

A. I don't know that.

Q. Do you know if he had been interrogated by State officials—I will withdraw that. Do you know if he had been interrogated by Kansas City Police Officers or Missouri Police Officers before you talked to him?

200 A. I do.

Q. Were you present during any of those interrogations?

A. No, sir.

Q. Do you know whether or not any promises of immunity as to State Prosecution had been made to him prior to the time that you talked to him?

A. I do not.

Mr. EDDY. I have no further questions.

The COURT. Mr. Porterfield.

Redirect examination by Mr. PORTERFIELD:

Q. Agent Laughlin, did you make any arrangements with the State authorities to make any promises to the Defendant out of your presence, or anything of that nature?

A. No, sir, we were just there to interview him in connection with these cases.

Q. That is correct. And to your knowledge did any Federal Agent ask any State Agent to make any promises to the Defendant?

A. No, sir.

Q. And as your statement reflected, you apprised the Defendant of his rights, that he did not have to give you any statement before you took the statements, is that correct?

A. Yes.

201 Mr. PORTERFIELD. Now, with the Court's permission I would move the Court for leave to reopen the direct examination of this witness. I omitted one portion of

testimony which I feel should be brought to the attention of the Court.

The Court. Permission is granted.

Direct examination (reopened) by Mr. PORTERFIELD:

Q. Mr. Laughlin, after the interview of the 21st of March, 1963 wherein you took the statements that are represented by Exhibits 16 and 17, did you at any later date see the Defendant again to interview him?

A. Yes, sir, on the following day, March 22nd.

Q. At that time did he discuss with you or did you discuss with him the statements that I have just mentioned; that is, those statements contained in 16 and 17 of the Prosecution's Exhibits?

A. Yes, he told us he would like to make changes, specific changes to each statement made on the previous day.

Q. Would you tell us, please, what he said in that regard, that is, what changes he wanted to make.

Mr. EDDY. May we have the time, place and persons present?

A. I can answer that.

Mr. PORTERFIELD. Very well.

A. Myself and Agent William C. Piper were present with the Defendant.

Mr. PORTERFIELD. And about what time was it?

202 A. That was on the morning of March the 22nd.

Q. And where?

A. In the same interview room in the Kansas City, Missouri Police Department.

Q. Now, will you tell us, please, what he told you he wanted to change in regard to the statements he gave you on the previous day?

A. With regard to the statement concerning the Fort Sutter bank robbery, he said he wanted to make changes regarding the mode of transportation to the bank. If my recollection serves me, in the statement he said he drove a green '53 Oldsmobile. He said he would like to change that. He told us that he had stolen a 1951 or '2 dark colored Pontiac in the vicinity of the Capitol Building and used that car to transport himself to the bank, at which time he abandoned that car at the Greyhound Bus Station in Sacramento.

Q. Did he make any comment with regard to the balance of the statement concerning the Fort Sutter robbery?

A. No, he said the remainder of the statement was true and correct to the best of his knowledge.

Q. Now, did he also request that you note a change with regard to the statement made on the Bank of America robbery?

A. Yes; again he referred to the mode of transportation. In his statement on the previous day he had said that he had picked up a '53 green Oldsmobile, I believe it was in the 203 Capitol Parking Lot, something to that effect, I would have to look. At any event, on the following day he said he would like to change that, that he called Mr. Albert Freeman, I believe, and Mr. Freeman delivered the '53 Olds to him. He said he wanted to change that. In his initial statement he did not want to involve Albert Freeman, because Albert Freeman had no knowledge of the Bank of America Robbery; but he said he would like to change the statement and for the record that the car was obtained from Albert Freeman and not from a downtown parking lot.

Q. I see. And how about the rest of the statement he had given to you, Exhibit 17, did he make any further comments on that?

A. He made no further changes, and said that the statement was true to the best of his knowledge.

Mr. PORTERFIELD. Thank you. I have no further questions, your Honor.

Mr. EDDY. Nothing further at this time, although, your Honor, I will ask that this witness attend the Court until the evidence is concluded.

The COURT. Very well.

Mr. PORTERFIELD. You Honor, may the witness have the same latitude as the—

The COURT. Yes, he may have the same latitude, as long as he lets us know where he is, subject to immediate recall.

204 Mr. PORTERFIELD. Thank you, your Honor.

The United States rests.

207 WILLIAM FRANK LINHART, recalled as a witness on behalf of the Defendant—previously sworn:

The CLERK. Let the record show this witness has heretofore been sworn. His name is William Linhart.

Direct examination by Mr. EDDY:

209 Q. Did you hear the other officer promise the Defendant that if he cooperated with Federal Authorities the State charges would be dropped?

A. No, sir, I never heard a statement of that sort.

Q. Calling your attention to Defendant's Exhibit B, which is this booking sheet which was earlier in evidence, may I ask you to read it briefly. This has previously been identified as the record upon which the Defendant was originally booked when he was arrested, is that not true?

210 A. That is correct, sir.

Q. Now, do you know whether or not those original two charges, those robbery charges have been dismissed?

A. I made the arrest. No one—I have not yet testified in the State of Missouri.

Q. You have not yet testified, you say?

A. In the State of Missouri relative to the case. It has never been called to trial in the State of Missouri.

Q. Do you know of your own knowledge as you sit there whether those two particular complaints have been dismissed?

A. I have no knowledge, sir.

Mr. EDDY. No further questions.

Cross examination by Mr. PORTERFIELD:

Q. Officer Linhart, is it correct, then, that the only time you were present at an interrogation of the Defendant he denied any knowledge of any criminal activities, is that right?

A. That is correct, sir.

Q. And this is on the very night that he was arrested?

A. That is correct, sir.

Q. And is it correct also that that interrogation was directed toward his activities in the Kansas City area?

A. That is also correct, sir.

Q. In other words, it was your local department investigating the man and there were no Federal officers present
211 at the time your interrogation took place?

A. No, sir.

Q. Would it be fair to state that that, however, apparently at a later date, the defendant did make some admissions and these were reduced to a written statement, which you didn't take but know is in the hands of the Kansas City Police Department, is that correct?

A. That is correct.

Q. And at any time did you or any other Kansas City Police

Officer in your presence make any promises to the Defendant regarding information he might give, and rewards that you might make for giving that information?

A. No, sir, at no time was any offer or inducement made.

Q. At any time did you or any other officer of the Kansas City Police Department in your presence make any arrangement with any Federal Bureau of Investigation agent that you would obtain a promise from the Defendant if they wanted it from you?

A. No, sir.

Q. In other words, there was no deal or anything of that nature negotiated between your Department and the Federal Bureau of Investigation that you have any knowledge of, is that correct?

A. That is correct, sir.

Mr. PORTERFIELD. Thank you. I have no further questions.

212 The COURT. Anything else, Mr. Eddy?

Mr. EDDY. No.

Mr. PORTERFIELD. May the witness be excused at this time, your Honor?

The COURT. Unless there is objection, he may be.

Mr. EDDY. No objection.

The COURT. You are excused, Mr. Linhart.

Mr. EDDY. Mr. Trollope, please.

BILLY TROLLOPE, called as a witness on behalf of Defendant—Previously sworn:

The CLERK. Let the record show this witness has previously been sworn. His name is Billy Trollope.

Direct examination by Mr. Eddy:

Q. Officer, likewise you recall that you were a witness earlier in this case and you have been sworn?

A. Yes, sir.

Q. Did you take any statement from the Defendant in connection with the charges against him in Kansas City?

A. No, I did not, sir.

Q. Were you present at any time when a statement was taken from him by another officer?

A. No, sir.

Q. Are you aware of the fact that statements were taken from him?

213 A. Yes, sir.

Q. Do you know whether that statement was brought to Sacramento?

A. It was not, to my knowledge.

Q. Did anyone, in your presence, offer the Defendant a dismissal of the charges if he cooperated with the Federal authorities?

A. None in my presence, no, sir.

Q. Have you become aware that such an offer has been made?

A. Not until you brought it up here. This is the first I have heard of it.

Q. Calling your attention to Defendant's Exhibit B, which is the booking sheet which booked the Defendant at the time that he was arrested, do you recognize that?

A. I recognize this as the type that we use.

Q. Have you ever seen that one before?

A. Yesterday. It was in part of our file. I have seen it, yes, sir.

Q. Do you know whether or not the two Kansas City robbery charges identified on that sheet have been, in fact, dismissed?

A. To my knowledge, I didn't know.

Mr. Eddy. I have no further questions.

Cross examination by Mr. PORTERFIELD:

Q. Officer Trollope, are you aware that, after the testimony you heard in Court, that Federal agents did take a statement from the Defendant on the 21st of March, 1963?

214 A. Yes, sir.

Q. And after that time, and perhaps on the same day, or perhaps another day, is it that correct that you talked to or heard the Defendant talking about making that statement?

A. I talked briefly with the Defendant directly after the agents took the statement.

Q. Were you present when the statement was taken by the Federal Agents?

A. I was on the same floor. However, they were in a private room.

Q. They were in a private room. Is it correct that the Defendant told you after he made this statement that he had, in fact, made such a statement and admitted and cleared up the charges in California for the Federal Agents?

A. Yes, sir.

Q. And did he appear at that time to be under any duress or acting like he had been beaten or anything of that nature?

A. He had—

Mr. EDDY. I object to that as complex and compound, your Honor.

Mr. PORTERFIELD. I will rephrase the question.

Did you notice anything in the way of physical marks or bruises, or indications the defendant had been beaten or suffered physically in any way?

215 A. I did not.

Q. Did he appear to you to be mentally alert and cognizant of what was going on?

A. He did.

Q. Did he make any statement to you at that time that, "Well, I have made a deal," or "A deal has been made for me"?

A. There was nothing of that nature.

Mr. PORTERFIELD. Thank you. I have no further questions.

217 CARL M. HANSEN, called as a witness on behalf of Defendant—Sworn:

The CLERK. Your name?

A. Carl M. Hansen.

Direct examination by Mr. EDDY:

Q. You have given us your name, Mr. Hansen. What is your address, please?

A. Kansas City, Missouri.

218 Q. What is your occupation?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. And you are stationed in Kansas City?

A. I am.

Q. How long have you been a special agent?

A. Twenty-two years.

Q. How long in Kansas City?

A. I have been assigned to the Kansas City office since 1947.

Q. Are you the Senior Resident Agent at the Kansas City office?

A. No, I am not. That is a field division, we have an agent in charge, and a staff of agents assigned to that division.

Q. Are you the agent in charge?

A. No, I am not.

Q. Did you work on the case now in hearing?

A. I did.

Q. Were you present and on duty—were you present in Kansas City and on duty on the 20th of March of this year?

A. I was.

Q. Were you also present on the 21st?

A. I was.

Q. Now, did you have occasion to see the Defendant in the company of some Kansas City detectives on the 21st of March of this year?

A. I did.

Q. Were you requested to identify yourself to the
219 Defendant while he was in the company of some Kansas City detectives on the 21st of March of this year?

A. I did.

Q. Did you identify yourself to him?

A. I did.

Q. Now, at the time that you were introduced, if I may use that term, to the Defendant, was he making a written statement to the local officers?

A. At the time I saw the Defendant Detective Charles McKinney of the Kansas City Police Department was talking to him on the second floor of the Kansas City, Missouri Police Department.

Q. Do you know whether or not this Detective was taking a written statement from the Defendant at that time?

A. I do not know whether he was taking a statement at that time.

Q. Did you have any conversation with this Detective concerning the release of this defendant to Federal custody?

A. No, I did not. The conversation I had with Detective Charles McKinney was shortly before noon. He told me they were through talking to Mr. Westover at that time and the F.B.I. could talk to him.

Q. And was one part of the subject matter of this conversation dismissal of local charges in favor of the Federal prosecution?

A. I didn't know of any local charges even being filed at that time.

Q. At any time did you acquire knowledge of the dis-
220 missal of the local charges in favor of the Federal Prosecution?

A. No, I did not.

Mr. EDDY. I have no further questions.

Cross examination by Mr. PORTERFIELD:

Q. Agent Hansen, at the time you saw the Defendant in the custody of the Kansas City Police were either detectives Linhart or Trollope, who previously testified as witnesses here, present at that time?

A. I did not see them present at that time.

Q. And at the time you saw the Defendant in the custody of the Kansas City detectives whom you mentioned, one name, I believe McKinnon?

A. Detective Sergeant Charles McKinney.

Q. Was the Defendant being abused in any way?

A. No, he was not; he was standing in an open room there on the second floor of the Kansas City, Missouri Police Department.

Q. Did he appear to you to be under any mental duress or strain?

A. No, he did not.

Q. Did any time you hear either any local officers or any Federal officers make any promises of reward or immunity to the Defendant?

A. No, sir.

Q. As far as you were concerned, then, the local charges may or may not have been dismissed, but your concern in interviewing him was in connection with the Federal Investigation, is that right?

A. That is right.

Q. I will show you now Exhibits 16 and 17. You were present at the time that these two statements were taken from the Defendant? Will you look at those, please?

A. Yes. I have my name on here as a witness on the statement taken at Kansas City, Missouri March 21st, 1963, and another one taken the same day, my name is on here as a witness, Carl M. Hansen, Special Agent, F.B.I., Kansas City, Missouri.

Q. You were present then when both of the statements referred to as Exhibits 16 and 17 in this case were taken?

A. I was.

Q. And at the time those statements were taken was any discussion had with the Defendant about the dismissal or arrange-

ment of the dismissal of any charges that were then pending against him by the local authorities?

A. No, there was not.

Q. Was the defendant subjected to any physical abuse of any type or kind whatsoever?

A. No, sir.

Q. Were the statements he made free and voluntary on his part?

A. Yes, sir.

Q. Was he advised of his rights?

222 A. I advised him that he didn't have to make a statement, that any statement he made could be used against him in a court of law and that he had the right to see an attorney before he made the statements.

Q. And after he was told that he went ahead and made the statements referred to in Exhibits 16 and 17, is that correct?

A. He did.

Q. Was there any mental duress—what I mean by that, any implied threats made to the Defendant, that he had better make a statement to you, or anything of that sort?

Mr. EDDY. I am going to object to that, your Honor.

The COURT. I will sustain the objection.

I am not sure I know what that means.

By Mr. PORTERFIELD:

Q. Were any implied threats made to the Defendant?

A. No, sir.

The COURT. The question to Mr. Hansen, were any threats of any sort made against the Defendant at any time when you were there present when these statements were taken?

A. Absolutely not.

Q. Were any promises of reward or immunity made to the defendant at that time?

A. No, sir.

Mr. PORTERFIELD. I have no further questions of the witness, your Honor.

223

Redirect examination by Mr. EDDY:

Q. Mr. Hansen, when you first met this defendant he was in State custody, was he not?

A. Yes, sir.

Q. And then later on he was transferred to Federal custody, isn't that true?

A. I only talked to the Defendant on one occasion, and I did not work on the case after that.

Q. Well, you were aware of the fact that he was given into Federal custody, are you not?

A. That is correct.

Q. And you were aware that this transfer of custody took place in Kansas City, was it not?

A. Yes, it did.

Q. And it was after you took these two statements from him, isn't that true?

A. Will you repeat the question?

Q. The change from State custody to Federal custody was after you took these two statements from him, wasn't it?

A. Yes, sir.

Q. In other words, these two statements, 16 and 17, which you have just identified, were taken from this Defendant while he was not a Federal prisoner, isn't that true?

A. That is correct.

224 Q. You have no direct knowledge then of how he was housed at the time?

A. No, I do not.

Q. You don't know whether he was being fed or not?

A. No.

Q. You don't know whether he was being permitted to sleep on a cot or had to sleep on the floor?

A. No, I do not.

Q. You don't know what conversations may have occurred between him and his keepers, or jailers, just before these statements were taken by you and the other agents?

Mr. PORTERFIELD. I am going to object to this question as leading and suggestive, beyond the scope of the direct examination, and further it contains—

The COURT. Sustain the objection.

By Mr. EDDY:

Q. How long did it take to obtain these two statements from him?

A. I would estimate approximately two hours by the time they were written out in longhand, the two statements.

Q. What time of day?

A. The statements were started to be taken shortly after noon on March 21st.

Q. What time of day did you start taking the statements?

A. Shortly after noon.

Q. When did you first see the Defendant prior to 225 the time you started taking the statements?

A. Shortly before noon.

Q. Had you met the defendant before the time you saw him shortly before noon?

A. No.

Q. Were you present at all times after you were introduced to him until you started taking the statements?

A. I was.

Q. When you first saw him in whose custody was he?

A. As I testified previously, Detective Charles McKinney of the Police Department introduced me to Westover, and at that time Mr. McKinney at that time stated he was through questioning him and the F.B.I. could now question him.

Q. Did you hear the conversation that this Detective had with the Defendant prior to the time that you were introduced to him?

A. No, I did not.

Mr. Eddy. I have no further questions.

Recross examination by Mr. PORTERFIELD:

Q. Agent Hansen, at the time you were present when these statements were taken, it is correct, isn't it, that you didn't have any Federal warrant in your possession at that time?

A. No, I did not.

Q. And is it also correct that later after exchange of information apparently a Federal warrant was taken? You 226 would assume that from the fact he is now in Federal custody, is that right?

A. That is right.

Q. And in connection with the statements that were taken from the Defendant—I am referring now to Exhibits 16 and 17—is it true that it was the Defendant who supplied most of the details that went into those statements?

Mr. Eddy. Your Honor, I am going to object to this. These statements were placed in evidence by the Prosecution through another witness to the circumstances surrounding the statements. Although this witness was first called by the Defendant, he is really a part of the prosecution team, in this matter, and to permit the Prosecutor to go over the same ground again—

The Court. Mr. Eddy, this is the very thing that I sug-

gested to you when you started in on this this morning, that you were calling one of the men with the uniform of the other team. I think we are getting pretty far afield in these matters, but I don't think this particular question is objectionable, and I will overrule the objection.

Mr. EDDY. If I may restate my objection, your Honor.

The COURT. All right, I will hear it.

Mr. EDDY. The further ground is it is beyond the scope of the direct evidence. I did not touch on the question of these written statements taken by the F.B.I. with this witness, as I recall it. It was taken up for the first time on the first cross.

Mr. PORTERFIELD. I will submit, your Honor, it was further entered into on redirect examination after cross examination.

The COURT. Well, let me hear the question, Mr. Wight.

(Question read by reporter.)

The COURT. I am going to sustain the objection to the question. In other words, I don't think there is anything to be gained by going over that again.

Mr. PORTERFIELD. Very well, your Honor. I have no further questions.

Mr. EDDY. No further questions. The Defense rests.

227a WEDNESDAY, JUNE 12, 1963—1:05 P.M.

OPENING ARGUMENT ON BEHALF OF THE GOVERNMENT

Mr. PORTERFIELD. If the Court please, and ladies and gentlemen of the Jury, it is my duty, my job now, to sum up for you briefly the evidence that has been adduced in this trial, and to comment upon it from the point of view of the prosecution.

227b There is no question that the statement that the defendant gave on the 21st of March to the FBI Agents in Kansas City is a confession, and admission on his part that he committed these robberies. It tallies in every way as to the manner of how they were committed, and it tallies in every way with the physical evidence; that is, the gun and the overcoat and the loot itself. There is no question about this.

And, ladies and gentlemen, none of this evidence has been

contradicted. It remains before you in an uncontradicted state.

I want to point out that the defense has endeavored to imply that this confession was in a sense extorted from the defendant. That there was some deal involved there. This is all that is before you, this inference, this implication. The only way you can draw it is from the questions of counsel. You can't draw it from any of the witnesses, because the three police 227c officers certainly deny that any such deal was made, and the two FBI Agents who testified certainly denied that anything of this sort happened. And again, their testimony remains uncontradicted and unimpeached. There is no question about it, this statement was given freely and voluntarily.

The statement itself is signed by the defendant and it has in his writing, "I understand the statement. This is true and correct."

So what is there to doubt about the circumstances of the statement? Not one thing.

I submit to you that if you choose you can put the statement out of your minds, because I can honestly say to you that without the statement you still would have been presented this case. There is no question that the identification of the witnesses, the positive identification of the victim and the three people at the Fort Sutter Bank, the positive identification of the victim and the four people at the Bank of America, are enough to convict the defendant; but when you add the possession of the gun and the identification of the money that was in the possession of the defendant you again have an overwhelming amount of evidence.

So the statement, the confession, the written admission of the defendant is surplus. That is frosting on the cake, you might say. Disregard it if you choose to. I don't think you should on the basis of an inference of counsel wants you 227d to draw. I don't think you should. But if you want to, go ahead, and there is still more than sufficient evidence to find the defendant guilty.

I think that this has been a case where you might at times asked yourselves, "Well, with this evidence why are we here at trial?"

Well, this isn't really a proper question for you to ask. Under our judicial system any person charged with a crime can require the prosecution to prove its case against him beyond a reasonable doubt and to a moral certainty.

I don't know what was in the defendant's mind. He may have felt, "Well, maybe the plane will crash and maybe the witnesses won't get here." Or, "Maybe the prosecutor will drop dead in the middle of the trial." Something like that.

In his position I suppose any hope would be something to grasp onto; but the fact is that the evidence has been presented, the fact is that the defendant has had his day in court, he has been afforded every right that he is entitled to. He has been accorded everything that the Constitution of the United States and the laws of the United States say he should have. He has had his attorney, he has had a right to examine witnesses, he has had a right to offer evidence in his own behalf, and this has been done and the evidence still remains uncontraverted and more than sufficient to establish his guilt.

I don't think then that you should allow the question 227e of "Well, why did he come in? Maybe he wants us to feel sorry for him," or something of that nature to enter your minds.

You have a job to do. You have a job to do and it is a serious one, and the administration of justice requires that you do it.

And in this case I don't think that there is any question but that you will find the defendant guilty. You shouldn't allow any question of sympathy or compassion to enter into your minds. These are questions for his Honor to consider. Judge Halbert is the person who will have the responsibility if you find the defendant guilty of sentencing him. It is not something that you have any part in. It is not something that you should allow to enter into your judgment. You are here to make a decision on a question of fact: Is this evidence sufficient to prove beyond a reasonable doubt the defendant's guilt. Does it establish that in February, as the Indictment charges, he took money from the Fort Sutter Savings and Loan Bank here in Sacramento by force, by intimidation, and was he capable at that time of causing bodily injury to anyone who stood in his way?

And then look at the second count of the Indictment and determine as a matter of fact: Is this the person who held up the Bank of America, who took money from that bank by force or by intimidation and who was capable at that time of causing bodily injury to anyone who stood in his way?

I think that you must find that the defendant in this 227f case is the person who did those two robberies, he is the person who received the loot from those two robberies,

and he is the person who is guilty of these two crimes, and I ask that you consider this case, consider the evidence and find the defendant guilty; that you remember that he has had his day in Court, he has had his opportunity, and now the law has to exercise its judgment upon him, and you are the arm and the instrument of the law in this regard, and I ask that you find him guilty on both counts and that you return in this case a speedy verdict, because there is no question that the evidence here is insurmountable and overwhelming against Mr. Westover. Thank you.

The COURT. Mr. Eddy.

Mr. EDDY. Thank you, your Honor.

ARGUMENT ON BEHALF OF THE DEFENDANT

Mr. EDDY.

227g Now I hope that what I have to say here will be helpful to you. I will be very brief.

You may right now, it may have come to your minds by reason of what Mr. Porterfield has said, the evidence is undenyng. You may wonder why the defendant did not testify.

Counsel advised him not to testify. He had a right not to testify, and upon advice of counsel he withheld from this Court such evidence as he might have added here. If I made a mistake in that regard I am sorry; but this was something which was my decision and perhaps I was wrong, but I am sure that if I was this will not reflect upon your opinion on the guilt or innocence of my client.

At any rate, this failure to testify reflects mainly upon the statements that he gave and you are denied his explanation as to the circumstances under which they were made, and I won't discuss this any further except simply to accept Mr. Porterfield's offer when he says that they may be considered as surplusage, and I agree, too, they certainly are surplusage.

227h Counsel has speculated on what might have been in the defendant's mind to insist that he be tried. Of course, I think you all know that the guarantees of the United States Constitution and the laws of this country permits a man to insist on his day in court, and I suggest that he might have

been motivated by a sincere belief in his innocence, other than the things that counsel has suggested.

At any rate, it would be improper for you to discuss or to speculate upon what might have been in his mind. He is just availing himself of his rights in this case.

227i CLOSING ARGUMENTS ON BEHALF OF THE GOVERNMENT
Mr. PORTERFIELD.

227j Counsel said or tried to say that I inferred that because the defendant didn't testify you should draw some inference. That isn't true. No defendant can be compelled to testify against himself, and I do not ask you to draw any inference from that, and you shouldn't.

I do not say that the evidence is uncontradicted, and I think you as reasonable people can infer that if evidence can be contradicted then it should be; but I urge you, and you should not draw any conclusion from the failure of any defendant in this case or any other not to testify.

The COURT. 5 minutes, Mr. Porterfield.

Mr. PORTERFIELD. All right. Certainly in this case, ladies and gentlemen, the evidence is overwhelming, uncontroverted and uncontradicted. There is nothing to indicate in this case that would cast any doubt, that any doubt has been cast upon the evidence that has been offered before you. There is nothing whatsoever.

229 CHARGE OF THE COURT TO JURY

232 The evidence in this case consists of the sworn testimony of the witnesses, all exhibits which have been received in evidence, and all applicable presumptions stated in these instructions.

While you can consider only the evidence in the case in reaching your verdict, you are not limited to the bald statements of the witnesses in the consideration of their testimony. On the contrary, you are permitted to draw from the facts which you find have been proven such inferences as seem justified in the light of your own experiences.

An inference is a deduction or conclusion which reason and common sense leads one to draw from the facts which have been proven.

233 A presumption is an inference which the law requires the jury to make from particular facts. Unless declared by law to be conclusive, a presumption may be overcome or rebutted by direct or indirect evidence which is contrary to the facts presumed. Unless the presumption is so overcome or rebutted the jury is bound to find in accordance with the presumption.

You are the exclusive judges of the facts and of the effect and value of the evidence; but you must determine the facts from the evidence produced here in Court.

If any evidence was admitted and afterwards was ordered by me to be stricken out you must disregard entirely the matter thus stricken. And if any counsel intimated by any of his questions that certain hinted facts were or were not true you must disregard any such intimation and you must not draw any inference from it.

As to any statement made by counsel in your presence at any time during the course of this trial concerning the facts in the case you must not, under any circumstances, regard such statement as evidence.

The attorneys have discussed the law during the course of their respective arguments. They had a perfect right to do this. I would caution you, however, that you must look to these instructions and nowhere else for the law that will guide you in your deliberations in this trial. If the attorneys or anyone else have suggested, or if any of you believe that

234 the law is other than is given to you in these instructions,

I charge you that you must be guided by the rules of law given to you in these instructions to the complete exclusion of any other suggested or otherwise apparent rule of law.

236 You are not to be swayed by the fact that there may be a larger number of witnesses on one side of the case than on the other. It is not the number of witnesses that determines the weight of the evidence, but it is the credibility of the witnesses who testified that is the deciding factor in determining the amount of weight you should attach to the testimony.

239 The Court cautions you to distinguish carefully between the facts testified to by the witnesses and the statements made by the attorneys in their arguments or presentations as to what facts have been or are to be proven, and if there is a variance between the two you must, in arriving at your verdict, to the extent that there is such variance, consider only the facts testified to by the witnesses.

You will remember at all times that the statements of counsel in their arguments are presentations and are not evidence in the case. If counsel, upon either side, have made any statement in your presence concerning the facts of the case you must be careful not to regard such statement as evidence, and must look entirely to the proof in ascertaining what the facts are.

244 To each of these charges the Defendant has entered a plea of not guilty, which puts in issue every material allegation contained in the Indictment as to each of said charges.

As used in these instructions, the term "Savings & Loan Association" means a Federal Savings & Loan Association and any insured institution as defined by Section 401 of the National Housing Act as Amended.

As used in these instructions, the term "bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposits Insurance Corporation.

"Dangerous weapon" means any object, instrument or weapon which when it is used for such purpose, may or
245 does put a life in danger, or is capable of producing and is likely to produce bodily harm.

To put this definition in another form, it can be said that any object, instrument or weapon when used in a manner capable of producing and likely to produce death or bodily harm is then a dangerous weapon. Before you can find the defendant guilty of the offense charged in the first count of the Indictment in this case, namely, robbery of the Savings & Loan Association, you must be convinced from the evidence to the required degree, one, that the Defendant at about the time and place alleged in the Indictment, by force and violence, or

by intimidation, took from the person or presence of the person named in the Indictment property or money or some other thing of value belonging to or in the care, custody, control, management or possession of a savings and loan association; and

(2) That the Defendant at said time and place assaulted a person, or put in jeopardy the life of a person by the use of a dangerous weapon or device.

It is essential that each and all of the elements of the offense charged in the first Count of the Indictment on file in this case be proved by the Government to the required degree before you will be justified in finding the defendant guilty of such offense.

If, however, you are convinced from the evidence to the required degree that the Government has established
 246 the existence of each and all of the elements of the offense charged in the first count of the Indictment on file in this case, and that the Defendant is guilty of the commission thereof, you should not hesitate to find the Defendant guilty of such offense.

Before you can find the Defendant guilty of the offense charged in the second count of the Indictment in this case, namely, bank robbery, you must be convinced from the evidence to the required degree, (1) that the Defendant at about the time and place alleged in the Indictment, by force and violence, or by intimidation, took from the person or presence of the person named in the Indictment, property or money or some other thing of value belonging to or in the care, custody, control, management or possession of the bank, and

(2) That the Defendant at said time and place assaulted a person, or put in jeopardy the life of a person by the use of a dangerous weapon or device.

It is essential that each and all of the elements of the offense charged in the second Count of the Indictment on file in this case be proved by the Government to the required degree before you will be justified in finding the Defendant Guilty of such offense.

If, however, you are convinced from the evidence to the required degree that the Government has established the existence of each and all of the elements of the offense charged in the second count of the Indictment on file in this case,
 247 and that the Defendant is guilty of the commission thereof, you should not hesitate to find the Defendant guilty of such offense.

In order to constitute a robbery such as here charged, the taking must be accomplished either by force and violence or intimidation, this element being the gist and distinguishing character of the offense. But there need not be both force and violence and intimidation. Either force and violence or intimidation being sufficient without the other.

Intimidation in the law of robbery means putting in fear, and the fear must arise from the conduct of the accused rather than the mere temperamental timidity of the victim. The fear need not be so great as to result in great terror, panic or hysteria. Even slight cause of fear or language of a threatening character may be sufficient to constitute intimidation, and the victim may be deemed to have been put in fear if the transaction is attended with such circumstances of fear as in common experience are likely to create an apprehension of danger and induce the victim to part with property for the safety of his person. If there exists reasonable belief that injury will result from non-compliance with the robber's demand, the necessary fear is present.

Keep in mind at all times that there are two counts in this Indictment. The defendant is charged with separate and distinct offenses in each of these counts. You must consider the evidence applicable to each alleged offense as though it were the only accusation before you for consideration, and you must state your finding as to each count in your verdict, uninfluenced by the mere fact that your verdict as to another count is in favor of or against the Defendant.

The Defendant may be convicted or acquitted on any or all of the offenses charged, depending upon the evidence and the weight you give to it under the Court's instructions.

If you should find that there are discrepancies or inconsistencies existing in the testimony of any witness, or between the testimony of various witnesses, or if you should find yourselves disagreeing over various issues, real or apparent, you should then ascertain whether or not such discrepancies or inconsistencies or such points of difference affect the true issues in the case. Examine such discrepancies or inconsistencies and such disputed points and ask yourselves these questions: How does the decision of this or that or the other discrepancy or matter in dispute affect the guilt or innocence of the Defendant?

Regardless of what may be the truth concerning the discrepancies or inconsistencies, ask yourself the main question:

Did or did not the Defendant commit the offenses charged in the Indictment? Is such discrepancy or such disputed point material to establish the main and material issue of fact as to the guilt or innocence of the defendant?

249 If they are not material, if a decision of the same is not necessary to enable you to arrive at the truth of the guilt or innocence of the defendant, then such discrepancies or inconsistencies or disputed points are immaterial and minor matters and you should waste no further time in discussing or considering them.

It is your duty as jurors, as I have stated, to try this case as to the facts upon the evidence introduced at the trial and upon the law as given to you by the Court in these instructions. The Court, however, has not attempted to embody all the law applicable to the case in any one of these instructions, but in considering any one instruction you must construe it in the light of and in harmony with every other instruction given, and so considering and so construing apply the principles in it enunciated to all the evidence admitted upon the trial.

252 Has the Government any exceptions or objections to note to these Instructions?

Mr. PORTERFIELD. None, your Honor.

The COURT. Has Counsel for the Defense any exceptions or objections to note to these instructions?

Mr. EDDY. No, your Honor.

VERDICT

(The Jury retired at 2:30 P.M., and returned at 3:07 P.M. with a verdict of Guilty as to both Counts. The Jury was polled individually as to whether this was their verdict, and each juror answered in the affirmative.)

The COURT. Let the verdict be recorded.

255 MONDAY, JULY 1, 1963—9:30 A.M. CALENDAR

The COURT. Mr. Westover, is there anything you desire to say before judgment is pronounced in this case?

The DEFENDANT. No, sir, your Honor.

The COURT. In this case it is the judgment of the Court and the sentence of the law that for these offenses of which you have been found guilty, as to each of these offenses, you be imprisoned in a Federal Penitentiary for a term of fifteen years, the institution to be selected by the Attorney General. These sentences are to be consecutive, making a total sentence of thirty years.

Now, Mr. Westover, this is a severe sentence, but I think in the face of your record you could not expect anything but a severe sentence.

I will say to you that you are very fortunate that you were in this Court, because if you had been in a State Court your sentence would have been five years to life on each one of these counts, and I am sure that you well know that from your previous experience.

The DEFENDANT. Yes.

The COURT. The Defendant is remanded to the custody of the Marshal to serve the sentence imposed.

Mr. Eddy, I want to thank you very much for your time and effort in this matter, and I want to say to you that I think you did a creditable job and a good job, in your efforts to see that the rights of this Defendant were fully protected.

Mr. EDDY. Thank you, your Honor.

* * * * *

258 [Reporter's Certificate to foregoing transcript omitted in printing.]

260

[File endorsement omitted]

In the United States District Court for the Northern District
of California, Northern Division

No. Cr. 13655

UNITED STATES OF AMERICA

v.

CARL CALVIN WESTOVER

Verdict—June 12, 1963

We, the Jury, find Carl Calvin Westover, the defendant at
the bar, Guilty on Count 1, Guilty on Count 2.

CLYDE A. MALOUL,
Foreman.

JUNE 12, 1963.

261

[File endorsement omitted]

In the United States District Court for the Northern District
of California, Northern Division

No. 13655

UNITED STATES OF AMERICA

v.

CARL CALVIN WESTOVER

On this 1st day of July, 1963 came the attorney for the
government and the defendant appeared in person and¹ by
counsel.

Judgment and Commitment—July 1, 1963

It is adjudged that the defendant has been convicted upon
his plea of ² Not Guilty and a Finding of Guilty of the offense
of violation of Title 18 USC Section 2113 (a) and (d)—(Rob-
bery of Bank and Federally Insured Savings and Loan Asso-

¹ Insert "by counsel" or "without counsel; the court advised the defendant
of his right to counsel and asked him whether he desired to have counsel
appointed by the court and the defendant thereupon stated that he waived
the right to the assistance of counsel."

² Insert (1) "guilty," (2) "not guilty, and a verdict of guilty," (3) "not
guilty, and a finding of guilty," or (4) "nolo contendere," as the case may be.

ciation) in that on or about February 4th, 1963 in Sacramento, California he did, by intimidation, unlawfully, wilfully and feloniously take certain money belonging to a Federally Insured Bank; and on or about March 14th, 1963 he did, by intimidation, take certain money belonging to a Federally Insured Savings and Loan Association as charged ³ in the Indictment in 2 counts, and the court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ⁴ Fifteen (15) Years on each Count to run consecutive to each other.

It is adjudged that ⁵

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

Signature

United States District Judge.

The Court recommends commitment to: ⁶

JAMES P. WELSH,

Signature

By

Deputy Clerk.

¹ Insert "in count (s) number" " if required.

² Enter (1) sentence or sentences, specifying counts if any; (2) whether sentences are to run concurrently or consecutively and, if consecutively, when each term is to begin with reference to termination of preceding term or to any other outstanding unserved sentence; (3) whether defendant is to be further imprisoned until payment of the fine or fine and costs, or until he is otherwise discharged as provided by law.

³ Enter any order with respect to suspension and probation.

⁴ For use of Court wishing to recommend a particular institution.

262 In the United States Court of Appeals for the Ninth
Circuit

No. 19,543

CARL CALVIN WESTOVER, APPELLANT,

vs.

UNITED STATES OF AMERICA, APPELLEE.

On Appeal from the United States District Court for the
Northern District of California, Northern Division

Opinion—March 11, 1965

Before: CHAMBERS, Circuit Judge, MADDEN, Judge of the Court
of Claims; and JERTBERG, Circuit Judge.

MADDEN, Judge:

This is an appeal from convictions on two counts of violations of 18 U.S. Code, §§ 2113(a) and 2113(d). Count (1) charged the robbery of a federally insured savings and loan association, and count (2), the robbery of a federally insured bank. Both of these financial institutions were in Sacramento, California. The savings and loan association was robbed on February 4, 1963, and the bank on March 14, 1963.

The appellant was arrested in Kansas City, Missouri, at about 9:45 p.m. on March 20, 1963, by two Kansas City policemen, on charges of robberies in Kansas City and also because of a report from the Kansas City office of the Federal Bureau of Investigation that the appellant was wanted on a felony warrant from the State of California. When arrested, he was entering an automobile. When he was first questioned by the Kansas City policemen he gave a false name, but later admitted his identity. He was searched, at the time of arrest, and
263 his automobile was searched. He was taken to police headquarters and, after notice had been given to personnel in places in Kansas City that had been held up, he was placed in a line-up and identified by certain observers as the robber. At about 11:45 p.m. he was "booked" by the Kansas City police.

F.B.I. agents in Kansas City, having been advised that the appellant had been arrested by the Kansas City police and was in custody in the city jail, told the police that they desired to

interview the appellant. At about 11:30 a.m. on March 21, the F.B.I. agents were told that the appellant was available, in a room in the city jail. He had been interrogated, during the forenoon, by the police with regard to the local robberies. Three F.B.I. agents conducted the F.B.I. interview. No Kansas City policeman was present at the interview. The F.B.I. agents advised the appellant that he did not have to make a statement; that any statement that he made could be used against him in a court of law; that he had the right to consult an attorney. The agents made no threats or promises to the appellant. The appellant made detailed statements as to how he had committed the two Sacramento robberies for which he was later indicted and tried. His statements were written down in long-hand by one of the agents, as they were made, a separate statement being made for each of the robberies for convenience of filing. The statement about the savings and loan robbery occupied three pages and the one about the bank robbery occupied four pages. During the interview, there was on the table in the interview room a gun which the Kansas City Police had found when they searched the appellant's hotel room. This search was made pursuant to a "waiver of search" given by the appellant to the Kansas City police. The appellant said to the F.B.I. agents that that was the gun which he had used in the robberies. He said that the money, approximately \$600, which he had when he was arrested in Kansas City was a part of the proceeds of the bank robbery, that it was all that was left of the \$4300 which he obtained in that robbery, because he had lost all but \$1000 of the money gambling at Las Vegas on his way to Kansas City.

The statements were signed by the appellant and the F.B.I. interview was completed at 2:00 or 2:30 p.m., some two or two and one-half hours after it began. At the time the interview began, and when it ended, none of the F.B.I. agents had
 264 received from Sacramento any details regarding the robberies described in the appellant's statements to them. They had, so far as appears, only been notified that the appellant was "wanted" for the robberies.

Two of the same three F.B.I. agents interviewed the appellant again on the morning of the following day, i.e., on March 2. He told them that he wanted to change his statement of the previous day with regard to his mode of transportation to the savings and loan company on the day he robbed

it, and to make a similar change with regard to his transportation in connection with the robbery of the bank. He said that the rest of the two statements were true as he had made them the previous day.

The statements above discussed were offered and received in evidence at the appellant's trial. He now urges that they should have been excluded, *sua sponte* by the court, even though appellant's counsel at the trial did not object to their admission. He says that the doctrines of the cases of *McNabb v. United States*, 318 U.S. 332; *Upshaw v. United States*, 335 U.S. 410; *Mallory v. United States*, 354 U.S. 449; and *Ginoza v. United States*, CA 9, 279 F. 2d 616, and Rule 5(a) of the Federal Rules of Criminal Procedure require the exclusion of the appellant's confessions.

The precedents cited by the appellant have no direct application to the facts of this case, since the appellant had not been arrested by federal officers and was not in their custody at the time he made the statements, nor, as we shall see, until eleven days thereafter. The appellant, however, urges that, even if a prisoner is in state custody, the McNabb exclusionary rule may exclude a confession made to federal agents if there is between the state and federal agents a cooperative "working arrangement" of a kind which makes the federal agents responsible for illegal detention by the state agents.

Appellant cites *Anderson v. United States*, 318 U.S. 350, as the instance in which the Supreme Court applied the doctrine referred to above. In that case a Tennessee sheriff illegally arrested many persons suspected by him of having blown up certain power lines. They were not taken before a magistrate, as Tennessee law required. They were held in custody in a private building belonging to the company some of whose facilities had been blown up. While there held, they
 265 were questioned intermittently over a period of five days, during which they saw neither friends, relatives, or counsel. At the end of, and as a result of the interrogations, incriminating statements were obtained from six persons. They were indicted for and convicted of the federal crime of conspiring to damage property owned by the Tennessee Valley Authority, a federal agency. Their incriminating statements referred to above were admitted in evidence at their trial. The Court, in describing the experiences of the petitioners, first described those of Simonds. He

was arrested on Wednesday afternoon. He was questioned by an F.B.I. agent on Thursday morning, by three agents for two hours on Thursday afternoon, by two agents for two hours on Thursday night. On Saturday afternoon and evening he was questioned during three different periods. On Sunday afternoon he was questioned, and confessed. The experiences of the other petitioners, each recited by the Court, were comparable.

The Court speaks of the petitioners having been held, some for days, and subjected to long questioning in the hostile atmosphere of a small company-dominated mining town. The Court says:

"There was a working arrangement between the federal officers and the sheriff of Polk County which made possible the abuses revealed by this record."

The Supreme Court did not, of course, condemn working arrangements between federal and state law enforcement officers. It condemned the kind of working arrangement revealed in *Anderson*, "which made possible the abuses" which there occurred.

In the instant record we find no such abuses, nor any abuses at all. When a state has custody of a prisoner, we see no reason whatever why it may not allow F.B.I. agents, in the state's police headquarters, to interview the prisoner. In our case, being interviewed, the appellant rather promptly confessed, since the whole interview, including the writing in long hand of some seven pages, was accomplished in two or two and one-half hours. The appellant was in the custody of the State. He had been arrested and booked by the State on two serious charges, robbery. There was no possible reason why the F.B.I., which had no evidence against him until it received his confessions, should have demanded or become responsible for his custody. If it were relevant, it might be noticed that the Missouri Statute, Vernon's Annotated Missouri Statutes, § 544.170, provides that one arrested without a
266 warrant shall be discharged from custody unless within twenty hours he is charged on oath and held by warrant to answer. The time of the appellant's interview by the F.B.I. was well within the 20 hour period set by the Missouri statute. The fact that the F.B.I. allowed the appellant, on the day following his confessions, to correct his statements in ways unrelated to his guilt and of no interest to the prosecution is of no importance.

The fact that the State of Missouri held custody of the appellant for some eleven days after his confession before surrendering him to the F.B.I., which by that time had an indictment and a warrant for his arrest, does not retroactively convert the rational proceeding which occurred on the day after the appellant's arrest into an abuse of the kind which disturbed the court in *Anderson, supra*. It was not for the F.B.I., nor is it for us, to assume, without evidence, that Missouri's detention of the appellant was unlawful.

The case of *United States v. Coppola*, CA 2, 281 F. 2d 340, affirmed 365 U.S. 762, involved a situation comparable to ours, and that court decided that the admissions made by the appellant in that case were properly received in evidence.

In the case of *United States v. Tupper*, W.D.Mo.W.D., 168 F. Supp. 907, the Court applied the doctrine of *Anderson, supra*. It found that the defendants made their statements to F.B.I. agents during a period of unlawful detention by Kansas City police. The detention was from October 11 to October 14, on which day the confessions were made. The court found that the federal agents had knowledge that the defendants were being unlawfully detained by the Missouri police, and that the federal agents took the statements in the presence of, and with the cooperation of, the police. There are other factors recited in the opinion which, the Court thought, justified its being decided as *Anderson* was decided. *Tupper* is readily distinguishable from the instant case.

On April 1, 1963, the federal grand jury in California indicted the appellant for the two Sacramento robberies. He was thereupon turned over by the Missouri state authorities to the F.B.I., arrested on a federal warrant, and returned to California for trial. The evidence of his guilt was ample. There

were the two statements which we have discussed above.

267 When the appellant was arrested in Kansas City he was still in possession of some of the currency which had been taken in the bank robbery, of which currency, by clever forethought, the serial numbers had been recorded by the bank, so that in case of robbery it could be put into the robber's loot as "bait money." There were many witnesses who identified the appellant as the one who committed the robberies. The method, used in both robberies, of compelling a supervisory employee to pass along the row of tellers inside the tellers' enclosure while he, the robber, followed along outside the

enclosure making sure that his orders were obeyed, put him under the close observation of the tellers while he was robbing the two institutions. At the bank, one customer, Mrs. Ousley, was aware that the bank was being robbed and said so, and was quietly told by the robber to shut up. The identification evidence was convincing.

The appellant complains that his counsel was not permitted to obtain from an F.B.I. agent who was a witness for the prosecution the statement made to him by the witness Ousley mentioned above who was a customer in the bank, describing the robber. For some reason the F.B.I. agent, Miller, in preparing the statement which was to be signed by Mrs. Ousley, included only her narration of the actions of the robber, and not her description of him. The signed statement was furnished to the defendant's counsel. On cross-examination, the F.B.I. agent disclosed that he had also taken notes of Mrs. Ousley's description of the robber, had later dictated the substance of the description, had signed it, and had it with him in court. The defendant's counsel asked to see the statement. The prosecution said it had no objection. But the court of its own motion shut off the inquiry "on several grounds, on the ground that it has no probative value, on the ground that it is not proper cross-examination." The court also said that the statement was not admissible because Mrs. Ousley had already testified and had been excused, and therefore the statement could not be used to cross-examine her.

A short time later the prosecutor recalled the F.B.I. agent, with the court's permission, for direct examination. He asked the witness whether he had made notes of Mrs. Ousley's description of the robber in her statement to him. The answer was in the affirmative. The court then interposed and
268 prevented the prosecution from getting the statement and giving it to the defense counsel. The prosecution was persistent but the court was adamant in its position.

Mrs. Ousley had testified and been cross-examined by defense counsel. In the cross-examination it had been brought out that the F.B.I. agent Miller had interviewed her at the bank shortly after the robbery, and had later brought photographs to her house which she had identified as photographs of the appellant. It would have been prudent for defense counsel to ask Mrs. Ousley if Miller had made notes of his interview. The answer would have been affirmative, and then, if

he desired, defense counsel could have called for the notes and, again if he thought it useful, could have used the notes in cross-examining Mrs. Ousley further. But he did not do these things, Mrs. Ousley completed the testimony, and no right to recall her was reserved. Three other witnesses testified and then Miller was called by the prosecution. On cross-examination by defense counsel he was asked whether he had taken a written statement from Mrs. Ousley, he said that he had, and produced the statement. Defense counsel examined it during the over-night recess and put it in evidence, without objection, on the following morning. At this time defense counsel brought out, from Miller, the fact that Mrs. Ousley's description of the robber was not included in her signed statement but had been written up separately from Miller's notes of the interview, and that Miller had a typed copy of that writing in court. That was the paper which defense counsel requested, the prosecution offered, but the court would not permit to be disclosed.

We think the court might better have at least discussed with counsel the practicability of getting Mrs. Ousley back into court, if defense counsel, on examining the paper, concluded that he wanted to use it to cross-examine her. It is possible that the statements in the paper, vouched for by Miller as having been told him by Mrs. Ousley, might have been admissible as prior statements made by her which were inconsistent with her testimony, and even though no foundation had been laid for such evidence when Mrs. Ousley was on the witness stand. The paper was not a writing of Mrs. Ousley, nor signed by her, and the rule of the *Queen's Case*, 2 Brod. & Bing. 284, 286, would not be applicable. See IV Wigmore on Ev., 3d Ed. § 1259.

270 Further, with regard to the topcoat, it was a relatively unimportant piece of evidence in a trial in which the other evidence of guilt was overwhelming. If we were to regard the admission of the coat as error, it would be harmless error, under Rule 52(a) of the Federal Rules of Criminal Procedure. In the case of *People v. Parham*, 60 Cal. 2d 378, the Supreme Court of California, which had applied the exclusionary rule in *People v. Cahan*, 44 Cal. 2d 434, six years before the rule was made compulsory by *Mapp v. Ohio*, 367 U.S. 643, applied the California "miscarriage of justice" rule in a case in which illegally obtained evidence was admitted but in which, in the circumstances, there was no reasonable probability that that evidence affected the verdict.

The appellant has raised other questions which we have considered. We have concluded that they are without merit.

The judgment is affirmed.

269 We have no reason to believe that there was anything in the paper in question inconsistent with Mrs. Ousley's testimony. The prosecution's eagerness to get the paper into the hands of defense counsel in order to avoid possible error is some indication of that. Defense counsel did not ask that the paper be made a sealed rejected exhibit so that an appellate court could examine it. It would be pure speculation on our part for us to conclude that there was something in that paper so important that it would warrant the reversal of this judgment. Defense counsel could have avoided this difficulty by questioning Mrs. Ousley about her interviews with Miller, of which defense counsel was aware. In the circumstances, we find no merit in the claim of error.

The appellant complains that a certain topcoat was marked for identification, was shown by the prosecutor to witnesses of the bank robbery, who testified that the robber wore a topcoat which looked like that one, and was ultimately admitted in evidence as a government exhibit. The appellant says that the coat should not have been admitted, because it had been acquired in an illegal search.

When the appellant was arrested by the Kansas City police he was searched and his automobile was searched. The automobile was then towed to the police storage lot. On the following day a policeman and an F.B.I. agent, without a search warrant, again searched the automobile and found the topcoat which is here under discussion, in the trunk of the automobile. That search was a violation of the Constitution, *Preston v. United States*, 376 U.S. 364, and the topcoat should have been excluded, if its admission had been objected to.

As we have said, the topcoat had been, early in the trial, marked for identification and shown to witnesses. Ordinary prudence would have caused the appellant's trial counsel to inquire then as to how the coat had been obtained, and, having learned the facts in that regard, to have objected to its use. But there was no objection, then or when the coat was finally offered in evidence. We think the appellant is not, in the circumstances, entitled to raise the question for the first time in this appeal. When inadmissible evidence is offered by the prosecution in a criminal trial, we think the defendant may

not sit silent and allow the trial to be sabotaged when the inadmissibility of the evidence is obvious or could be made so by a simple inquiry.

271 In the United States Court of Appeals for the
Ninth Circuit

No. 19,543

CARL CALVIN WESTOVER, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

Judgment—Filed and entered March 11, 1965

Appeal from the United States District Court for the Northern District of California, Northern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Northern Division, and was duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

272 Supreme Court of the United States

No. 80 Misc., October Term, 1965

CARL CALVIN WESTOVER, PETITIONER

v.

UNITED STATES

On petition for writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Order granting motion for leave to proceed in forma pauperis and granting petition for writ of certiorari—November 22, 1965

On consideration of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; that the petition

for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 761 and placed on the summary calendar and set for oral argument immediately following No. 397, Misc.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.